

Tufston (Sackville)
from R. Fergusson
6495. e. 10.
THE
Earl of Thanet.
WHOLE PROCEEDINGS

UPON AN

INFORMATION

EXHIBITED EX OFFICIO BY

THE KING'S ATTORNEY-GENERAL,

AGAINST

THE RIGHT HON. SACKVILLE EARL OF THANET,
ROBERT FERGUSSON, ESQUIRE,
AND OTHERS,

FOR

A Riot and other Misdemeanours :

Tried at the Bar of the Court of King's Bench, April 25, 1799.

Taken in Short-Hand by WM. RAMSEY....The Evidence compared
with the Notes of two other Short-Hand Writers.

TO WHICH ARE ADDED,

SOME OBSERVATIONS,

BY

ROBERT FERGUSSON,

ON HIS OWN CASE,

AND ON THE POINTS OF LAW ARISING UPON THE
INFORMATION.

London,

Printed for R. OGLE, No. 5, Great Turnstile,

By COOPER and WILSON, Wild-Court, Lincoln's-Inn-Fields.

1799.



**** The Plan of the Court at Maidstone will
be found at the end of the Observations.*

CONTENTS.

The INFORMATION	Page 1
The ATTORNEY-GENERAL's opening Speech	8
EVIDENCE for the CROWN—	
John Stafford	15
Mr. Serjeant Shepherd	15
Rev. William Hufley	21
Lord Romney	23
Sir John Mitford	25
Mr. Justice Heath	28
Charles Abbott, Esq.	29
John Rivett	31
Sir Edward Knatchbull	39
Thomas Watfon	40
Thomas Adams	41
Henry William Brooke	43
John Stafford	45
The Hon. Robert Clifford	49
Thomas Wagstaffe	50
William Cutbush	51
—— Omrod	52
Robert Parker	52
The Hon. THOMAS ERSKINE's Address to the Jury on behalf of the Defendants	54
Acquittal of Mr. BROWNE and Mr. THOMPSON, two of the Defendants	95
EVIDENCE for the DEFENDANTS—	
Mr. George Smith	96
Mr. Bainbridge	99
Mr. Warren	104
Mr. Maxwell	108
Mr. Whitbread	112
Mr. Sheridan	114
The ATTORNEY-GENERAL's Reply	120
Lord KENYON's Charge to the Jury	130
Verdict of the JURY	133
	Speech

Speech of Lord THANET, upon being brought up for judgment, 3d May	- - - - - Page	133
Affidavit of ditto	- - - - -	136
Speech of Mr. FERGUSON, upon the same occasion	-	137
Affidavit of ditto	- - - - -	138
Defultory Conversation upon the point, whether the Punishment be discretionary or specific	- - -	139
Address of the Attorney-General, upon the Defendants being again brought up for Judgment on the 10th June		143
Speech of Mr. Justice GROSE	- - - - -	144
Sentence	- - - - -	150
Some Observations upon his own Case, by ROBERT FERGUSON	- - - - - follow.	

JURY.

JAMES LEIGH JOYNES, of Milton, near Gravesend, Esq.
 NICOLAS GILBEE, of Chalk and Denton, Esq.
 RICHARD CAREW, of Orpington, Esq.
 JOHN PLATT, of the same place, Esq.
 JOHN LEADER, of Bexley, Esq.
 ISAAC RUTTON, of Ospringe, Esq.
 JOHN BAX, of Silgrove Boro', Esq.
 JOHN TEMPEST, of Town Boro', Esq.
 JOHN OSBOURNE, of South Boro', Esq.
 WILLIAM LEIGHTON, of Charlton, Esq.
 WILLIAM GOODHEW, of St. Paul's, Deptford, Esq.
 WILLIAM SAVARY, of Greenwich, Esq.

Counsel for the Crown.

Mr. ATTORNEY-GENERAL,	Mr. WOOD,
Mr. LAW,	Mr. FIELDING,
Mr. GARROW,	AND
Mr. ADAM,	Mr. ABBOTT.

Solicitor.

Mr. WHITE, Solicitor for the Affairs of His Majesty's Treasury.

Counsel for the Earl of Thanet, Mr. Fergusson, and Mr. O'Brien.

Mr. ERSKINE,	Mr. BEST, and
Mr. GIBBS,	Mr. M ^o INTOSH.

Solicitor, Mr. LOWTON.

Counsel for Mr. Browne, Mr. ROUS.

Solicitor, Mr. FOULKES.

Counsel for Mr. Thompson, Mr. RAYNE.

Solicitor, Mr. BONNEY.



IN THE KING'S BENCH,

THURSDAY, APRIL 25, 1799.

THE KING,

VERSUS

SACKVILLE EARL OF THANET, AND OTHERS.

THE Information was opened by Mr. ABBOTT, and is as follows:

KENT, to wit. Be it remembered, that Sir John Scott, Knight, Attorney General of our present Sovereign Lord the King, who for our said Lord the King in this behalf prosecuteth, in his proper person cometh here into the Court of our said Lord the King, before the King himself at Westminster, on Wednesday next after three weeks of the Holy Trinity in this same term; and for our said Lord the King giveth the Court here to understand and be informed, that heretofore, to wit, on Monday the twenty-first day of May, in the thirty-eighth year of the reign of our Sovereign Lord George the Third, now King of Great Britain, and so forth, a special session of oyer and terminer and gaol delivery was holden by adjournment in and for the county of Kent, at Maidstone, in the said county, before Sir Francis Buller, Baronet, one of the Justices of our said Lord the King of his Court of Common Pleas, John Heath, Esquire, one other of the Justices of our said Lord the King of his Court of Common Pleas, Sir Soulden Lawrence, Knight, one of the Justices of our said Lord the King assigned to hold pleas before the King himself, Samuel Shepherd, Esquire, one of the Serjeants of our said Lord the King learned in the law, and others their fellows Justices and Commissioners of our said Lord the King, assigned, by letters patent of our said Lord the King under

8

under the great seal of Great Britain, to inquire, by the oath of good and lawful men of the said county of Kent, of all High Treasons, and misprisions of High Treason, other than such as relate to the coin of our said Lord the King, within the county afore said done, committed, or perpetrated; and the said Treasons, and misprisions of Treason, according to the laws and customs of England, for that time to hear and determine; and also assigned and constituted, by the letters patent of our said Lord the King, under the great seal of Great Britain, to deliver the gaol of our said Lord the King of the said county of Kent of the prisoners therein being and detained on the nineteenth day of March, in the thirty-eighth year afore said, or who should be therein detained before the tenth day of April in the same year, for or on account of any High Treasons, or misprisions of High Treason, other than such as relate to the coin of our said Lord the King. At which said session so then and there holden as afore said before the Justices and Commissioners above named, and others their fellows afore said, came Arthur O'Connor, Esquire, in the custody of John Plumptre, Esquire, Sheriff of the said county of Kent, and which said Arthur O'Connor was, and had been, detained in the gaol of our said Lord the King of the said county of Kent before the tenth day of April in the year afore said, to wit, on the seventh day of April in the same year, for and on account of High Treason, to wit, at Maidstone afore said: And the said Arthur O'Connor being then and there, to wit, at the said session so holden as afore said, brought to the bar in his own proper person, was then and there committed by the Justices and Commissioners above named, and others their fellows afore said, to the custody of the same Sheriff; and so being in the custody of the said Sheriff, was then and there, at the same session so holden as afore said, tried by the jurors of a certain Jury of the county of Kent in that behalf duly impannelled and returned, and chosen, tried and sworn, for and upon certain High Treasons not relating to the coin of our said Lord the King, specified and charged upon him in and by a certain indictment theretofore, to wit, at a previous holding of the same session before the said Sir Francis Buller and John Heath, and others their fellows Justices and Commissioners assigned as afore said, duly found, returned and presented against him by the jurors of a certain other Jury of the said county of Kent duly sworn and charged to inquire for our said Lord the King for the body of the same county, and to which said indictment he had theretofore pleaded that he was not guilty of the premises therein specified and charged upon him: And the said Arthur O'Connor then being in the custody of the said Sheriff as afore said, was then and there, at the same session, by the jurors by whom he was so tried as afore said, found not guilty of the premises in and by the said indictment specified



specified and charged upon him, as by the record and proceedings thereof more fully appears.—And the said Attorney General for our said Lord the King further giveth the Court here to understand and be informed, that *the right honourable Sackville Earl of Thanet*, late of Maidstone, in the county of Kent, *Robert Fergusson*, late of the same place, Barrister at Law, *Thomas Gunter Browne*, late of the same place, Esquire, *Dennis O'Brien*, late of the same place, Esquire, and *Thomas Thompson*, late of the same place, Esquire, well knowing the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to break the peace of our said Lord the King, and to interrupt and disturb the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, in the execution of their said office, and to prevent and hinder the due and peaceable holding of the same session, did, together with divers other riotous and ill-disposed persons, whose names are to the said Attorney General as yet unknown, in open Court, at the same session so then and there holden, and at which the said trial was so had as aforesaid, to wit, at Maidstone aforesaid, in the presence of the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, and before any order or direction had been made or given by the same Justices and Commissioners above named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and before the said Arthur O'Connor was discharged from the custody of the said Sheriff, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the county of Kent, with force and arms make and cause to be made a very great riot, rout, tumult and disturbance, and with force and arms riotously, routously and tumultuously attempt and endeavour to rescue the said Arthur O'Connor from and out of the custody of the said Sheriff, so that he the said Arthur O'Connor might go at large whithersoever he would, and also aid and assist the said Arthur O'Connor in an attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said Sheriff; and the better to effect such rescue and escape, did then and there, at the same session so holden, and at which the said trial was so had as aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the open Court aforesaid, and in the presence aforesaid, with force and arms, and with sticks, staves and fists, unlawfully, riotously, routously and tumultuously make an assault in and upon one John Rivett, one Edward Fugion, and one Thomas Adams, in the peace of God, and of our said Lord the King then and there being, and them the said John Rivett, Edward Fugion, and Thomas Adams, did

did then and there beat, bruise, wound, and ill-treat, and thereby then and there, with force and arms, did unlawfully, riotously, routously and tumultuously impede and obstruct the Justices and Commissioners of our Lord the King above named, and others their fellows aforesaid, in the due and lawful holding of the same session, and the execution of their office, for a long space of time, to wit, the space of one hour, to the damage of the said John Rivett, Edward Fugion, and Thomas Adams; to the great contempt, disturbance, and interruption of the Justices and Commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said Lord the King there being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that the said Sackville Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, well knowing all the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to rescue and cause to be rescued the said Arthur O'Connor, so being in the custody of the said Sheriff as aforesaid, from the custody of the said Sheriff, so that he the said Arthur O'Connor might go at large whithersoever he would, did afterwards, to wit, at the same session so then and there holden, and at which the said trial was so had as aforesaid, and before any order or direction had been made or given by the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and also before the said Arthur O'Connor was discharged from the custody of the said Sheriff, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone, in the county of Kent, with force and arms, aid and assist the said Arthur O'Connor in a certain other attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said Sheriff; and the better to effect such rescue and escape as last aforesaid, did then and there, with force and arms, and with sticks, staves, and fists, unlawfully make a certain other assault in and upon the said Thomas Adams, in the peace of God, and of our said Lord the King then and there being, and in the aid of the said Sheriff then and there also being, and him the said Thomas Adams did then and there again beat, bruise, wound, and ill-treat, to the great damage of the said Thomas Adams, to the great contempt, disturbance and interruption of the Justices and Commissioners
above

above named, and others their fellows aforesaid, in contempt of our said Lord the King and his Laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General for our said Lord the King further giveth the Court here to understand and be informed, that at the said session so holden, and at which the said trial was so had as aforesaid, to wit, at Maidstone aforesaid, in the county aforesaid, the said Sackville Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said Lord the King, and to interrupt and disturb the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session, did, together with divers other ill-disposed persons, whose names are to the said Attorney General as yet unknown, at Maidstone aforesaid, in the open Court aforesaid, and in the presence of the Justices and Commissioners above named, and others their fellows aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said Lord the King, and to interrupt, disturb, and obstruct the Justices and Commissioners above named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session; and being so assembled and gathered together, did then and there, with force and arms, at the said session so then and there holden, and at which the said trial was so had as aforesaid, in the open Court aforesaid, and in the presence aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised another very great noise, tumult, riot, and disturbance, and thereby for a long space of time, to wit, for the space of half an hour, interrupt, disturb, and obstruct the Justices and Commissioners above named, and others their fellows aforesaid, in the lawful and peaceable holding of the said session, and in and upon the said John Rivett, Edward Fugion, and Thomas Adams, in the peace of God, and of our said Lord the King then and there being, with force and arms, did then and there make another assault, and then the said John Rivett, Edward Fugion, and Thomas Adams, did again bear, bruise, wound, and greatly ill-treat, to the great damage of the said John Rivett, Edward Fugion, and Thomas Adams, to the great hindrance of public justice, to the manifest disturbance and violation of the peace of our said Lord the King, to the great hindrance, obstruction, and contempt of the Justices and Commissioners

Commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said Lord the King there being, in contempt of our said Lord the King and his Laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that at a certain other special session of oyer and terminer and goal delivery, holden by adjournment in and for the county of Kent, at Maidstone in the said county, on Monday the twenty-first day of May, in the thirty-eighth year aforesaid, before Sir Francis Buller, Baronet, one of the Justices of our said Lord the King of his Court of Common Pleas, John Heath, Esquire, one other of the Justices of our said Lord the King of his Court of Common Pleas, Sir Soulden Lawrence, Knight, one of the Justices of our said Lord the King assigned to hold pleas before the King himself, Samuel Shepherd, Esquire, one of the Serjeants of our said Lord the King learned in the law, and others their fellows Justices and Commissioners of our said Lord the King, by our said Lord the King duly assigned and constituted to hold the same session, the said Sackville Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said Lord the King, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, did, together with divers other ill-disposed persons, whose names are to the said Attorney General as yet unknown, in open Court, at and during the continuance of the said last-mentioned session, and in the presence of the Justices and Commissioners last above named, and others their fellows aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the said county of Kent, unlawfully, riotously, routously, and tumultuously, assemble and gather themselves together to break the peace of our said Lord the King, and to prevent and hinder the due and peaceable holding of the said last-mentioned session; and being so assembled and gathered together, did, then and there, with force and arms, at the said last-mentioned session, in the open Court last aforesaid, and in the presence last aforesaid, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot, and disturbance, and thereby for a long space of time, to wit, the space of half an hour, interrupt, disturb, and obstruct the Justices and Commissioners last above named, and others their fellows last aforesaid, in the lawful and peaceable holding of the said last-mentioned session,

to the great hindrance of public justice, to the contempt and interruption of the Justices and Commissioners last above named, and others their fellows aforesaid, to the manifest disturbance and violation of the peace of our said Lord the King, to the great terror of all the liege and peaceable subjects of our said Lord the King there being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that the said Sackville Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said Lord the King, did, together with divers other ill-disposed persons, whose names are to the said Attorney General as yet unknown, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the county of Kent, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said Lord the King; and being so assembled and gathered together, did then and there, with force and arms, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot, and disturbance, to the manifest disturbance and violation of the peace of our said Lord the King, to the great terror of all the liege and peaceable subjects of our said Lord the King there inhabiting and being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

Whereupon the said Attorney General of our said Lord the King, who for our said Lord the King in this behalf prosecuteth for our said Lord the King, prayeth the consideration of the Court here in the premises, and that due process of law may be awarded against them the said Sackville Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, in this behalf, to make them answer to our said Lord the King touching and concerning the premises aforesaid.

Wherefore the Sheriff of the said county of Kent was commanded that he should not forbear, by reason of any liberty in his bailiwick, but that he should cause them to come to answer to our said Lord the King touching and concerning the premises aforesaid.

And now, that is to say, on Wednesday next after the octave of Saint Hilary in this same term, before our said Lord the King at Westminster, come the said Sackville Earl of Tha-

net, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, by Benjamin Burnett, their Clerk in Court; and having heard the said Information read, they severally say that they are not guilty thereof, and hereupon they severally put themselves upon the country; and the said Sir John Scott, who for our said Lord the King in this behalf prosecuteth, doth the like therefore.

MR. ATTORNEY GENERAL.

May it please your Lordships, and Gentlemen of the Jury—I can very unfeignedly assure you, that I should have felt infinite satisfaction, if, in any view that I could take of what my country required of me, I could have determined not to have instituted the present prosecution.

Gentlemen, many reasons would have influenced me to act upon that wish. The first and the most important is, that I am obliged, by this Information, to impute to a Nobleman who is one of the defendants, and to the Gentlemen whose names occur upon this record as the other defendants, an offence which appears to me to be one of the most heinous, the consideration of which has been offered, in the history of our law, to the decision of a Jury.

Gentlemen, in so viewing the subject, I hope I may be allowed, though I am the prosecutor of this Nobleman and these Gentlemen, to express my regret that I am to make such an imputation in a Court of Justice with respect to any of them: but, Gentlemen, when I consider that the pure administration of law in this country is the great security upon which all the public blessings known to the country rest; when I recollect that it is absolutely necessary for the free and uncontrolled administration of that justice, that those who have duties relative to any part of it should act under the impression that they are perfectly secure in the administration of the justice of the country, it is quite impossible for me to act upon any other principle but this, namely, that it must be known that the Attorney-General of the country is bound, where there is a probable cause to impute to individuals that they have grossly violated that principle which requires that the administration of justice should be safe, to put upon them at least the necessity of satisfying a Jury of the country that they are innocent of that charge.

Gentlemen, I agree that the charge is not to be made upon light grounds; that circumstances ought to be laid before the Officer of the Crown, which may justify him in the exercise of a fair and honourable discretion to bring forward the accusation; and I shall go along with my learned friends in admitting, that the circumstance of the accusation being made, by no means decides that it is justly made: It is for you carefully and anxiously
to

to examine the circumstances of the evidence, and then to decide whether the first appearances of guilt have been also attended with actual guilt.

Gentlemen, the Information states to you, that at a Special Session of Oyer and Terminer held at Maidstone in the month of May last, Mr. O'Connor, together with several other persons, were tried for the crime of High Treason, of which they had been accused by a Grand Jury of the county of Kent. The Information states, that the Jury had found four of the Defendants, Mr. O'Connor being one of the four, not guilty of the offence with which they were charged. The Information states, that before he was discharged, these Defendants (and you will give me leave to point out particularly to you the substance of the different charges in this Information) did, in open Court, and before any discharge, make a riot, and attempt to rescue him out of the custody of the Sheriff; that they assaulted three persons named in the first count of the Information, John Rivett, Edward Fugion, and Thomas Adams; that they riotously impeded and obstructed the Commissioners of His Majesty in the due and lawful holding of the Session: The second count charges them with having, before the discharge of Mr. O'Connor, assisted him to rescue himself out of the custody of the Sheriff, and having assaulted Thomas Adams, who was acting in aid of the Sheriff: The third count charges them with having made a riot in open Court, and been guilty of the assault: The fourth count charges them with a riot in open Court, without the circumstance of the assault; and the last count charges them with a riot, without any addition of circumstances: And it will be for you to determine whether they are guilty of all or any of the charges stated in this Information.

Gentlemen, I will endeavour now to open to you as much of this case as may enable you to understand as much of this evidence as is offered to you; not entering into the minutiae of the evidence, but endeavouring to assist you in the information you will presently receive from the witnesses, by stating so much of the case as may make it intelligible to you, without presuming to state more to you; because, perhaps, in all cases where justice is to be administered, more particularly in criminal cases, it would be my wish that the Jury should learn it from those who are to state it upon their oaths, rather than receive any impression from the person standing in the situation in which I have the honour to address you.

Gentlemen, the trial at Maidstone was, as I need not tell those to whom I have the honour to address myself, an extremely long one. The witnesses on both sides had been desired to withdraw from the Court previous to the commencement of the trial. In the natural course of proceeding, the witnesses for the defendants were called after the witnesses for the prosecution; and

the Noblemen and Gentlemen who gave evidence in favour of Mr. O'Connor and the other defendants in that trial for High Treason, after respectively giving their evidence, remained in Court. It may be necessary for me here to state to you so much of the construction of the Court as will enable you to understand what I am now representing to you; you will have plans of the Court offered to you by and by, in order to make the evidence more intelligible. Give me leave to represent His Majesty's Commissioners to sit in the place where the learned Judges now sit; you will consider the Jury as sitting very nearly in the position, with respect to the Judges, as you now sit with relation to the Judges who now sit here. The Counsel for the prosecution sat, I think, in that part of the Court where that Gentleman is now sitting with a yellow waistcoat; and above them was a place in which the several witnesses were examined. The witnesses were therefore directly opposite the Jury, and the prisoners at the bar were removed somewhat behind the Counsel, who sat, as it were, in the place where I am now standing, there being some little distance between them and the prisoners, who were in the bar behind.

Gentlemen, after the several witnesses had been examined for the prisoners, most of them, I believe, remained in Court; and I should not make the observation, if it did not appear to me material with reference to the present case. Indeed, I should not be justified in making the observation, if I did not find it to be material to the present case; for the circumstance of the witnesses having been removed out of Court before the trial began was extremely favourable, I do not mean to say otherwise than justly so, to the prisoners, because, after the case had been proved, such as it was, on the part of the prosecution, one feels it a little difficult to believe, that if that evidence had been heard, by the witnesses for the defendants, which had been given by the witnesses for the prosecution, the evidence that was given for the defendants could have been given; and this is material in this point of view, because with respect to the Noble Lord who is one of the defendants upon this record, and with respect to some other defendants upon this record, although they had not heard the evidence in the course in which it was offered to the attention of the Jury, yet, before the circumstances happened which are charged in this Information as circumstances of criminal guilt, no one of the defendants, as far as I know, I mean, could have been ignorant of the circumstances actually proved with respect to Mr. O'Connor, as that evidence applied to his relation to England or his relation to Ireland; and I will state presently the use I mean to make of that circumstance. Gentlemen, in the course of the afternoon which preceded the conclusion of the trial, I have reason to believe that Lord Thanet, and the other persons upon this record, very studiously and anxiously placed themselves

6

in

in that part of the Court in which they could act with effect with respect to the rescue of Mr. O'Connor. Gentlemen, with respect to one of the defendants, whom, as a gentleman in the profession to which I belong, I certainly prosecute with all the regret that can belong to that circumstance, but which, at the same time, must not supersede the obligations I owe to the Public—that gentleman had been in Court during the whole of the trial: he had been Counsel for some or one of the prisoners; and he was placed, in consequence of the duty he had to discharge, in a situation in which, if he chose so to exert himself, he certainly could be useful in this attempt to rescue Mr. O'Connor. With respect to the Noble Lord, I need not, I am sure, in this place, state to you, that he holds in this country the character of an hereditary member of the Constitution; and with respect to the last gentleman whom I mentioned, Mr. Fergusson, I take leave to say, besides the general duty he owed to the Public in a matter of this nature, there was another very high duty imposed upon him, which I hope and trust Gentlemen who sit behind me will never forget—that that Gentleman, as a barrister, owed a duty to the Court—that it is their bounden duty, that it is a very sacred duty of their's, instead of interrupting the course of justice, to assist it in every fair, honorable and effectual way.

Gentlemen, a verdict of Not Guilty was given in the case of Mr. O'Connor; and here I am very ready to admit this, that if I could have persuaded myself that the circumstances which then took place, namely, that Mr. O'Connor, in consequence of that verdict, misconceiving that he was discharged, and acting under that impulse, had intended merely to mix himself with the rest of the Court, and that those who had been charged with the care of his interests, or those who thought well of him, had acted upon the impulse of the feelings of that moment, which might certainly have been such as to have misled men who, upon better consideration, would not have so acted, it would have become me to have hesitated before I determined, consistently with an attention to the public safety and to the public interests, to have instituted this prosecution.

Now, Gentlemen, before I proceed to state to you the circumstances to which I beg your serious attention, I will state to you the motives with which I do it. When I state the circumstance of a warrant having been issued to apprehend Mr. O'Connor, conceiving, as I do, that some persons either knew, or believed or conjectured, that there might be some other demand of justice upon O'Connor, and that therefore they were determined he should not remain in Court till he was regularly discharged, for the purpose of preventing that other demand of justice being made upon him—I say the offence, even in that way, is of so aggravated a nature,

ture, that I have no wish to charge it higher upon the record.

Then, Gentlemen, I have to state this to you—When the verdict of Not Guilty was pronounced, Mr. O'Connor endeavoured (it will be for you to decide whether or not with the co-operation of the defendants whose names occur upon this record) to get out from the place in which he stood as a prisoner, with a view to get out of Court, and for the purpose of not being answerable to some demands of justice which he, and those who were acting with him, had reason to believe would be made upon him, if he staid till he was regularly discharged.

Gentlemen, one of the defendants in this case, I mean Mr. Thompson, a member of Parliament, was bound, certainly, from his situation as a subject of this country, and bound from the high situation in which he stands in the country, not to be acting in the execution of such a purpose as this Information imports: but you will find that he, together with Mr. O'Brien, had taken great pains, in the course of the afternoon, to sift from certain persons who will be called to you as witnesses, one of whom, indeed, I cannot call, because the hand of God has removed him by death, but who would have spoke of important circumstances—I mean Fugion the officer; but I think you will find very satisfactory evidence independent of that; and I should not have mentioned his name, but his name will be introduced in a very striking manner by the witnesses; you will find that Mr. O'Brien and Mr. Thompson were, in the course of the afternoon, extremely anxious to inquire, and to know with certainty, whether there was any demand of justice upon Mr. O'Connor, supposing him to be acquitted of the present charge.

Gentlemen, you will hear and you will attend to the evidence that will be given upon that part of the case; and when the conduct of Mr. Thompson is stated to you by the persons who will relate how he acted at the moment when Mr. O'Connor first attempted to escape out of this Court, you will then consider with yourselves, whether the case is not, by that evidence, most completely made out against Mr. Thompson. I distinguish him in this part of the case, because, according to the evidence which I have now to offer to you, I have no testimony to give with respect to Mr. Thompson, as to his conduct in what I call the second riot which happened; and I think it right to say so, that the case may be disembarrassed in the first instance, and, in the second, that I may do him justice.

Gentlemen, you will hear what part Mr. Fergusson took in this: and here I cannot but observe, that it is quite impossible that I can do Mr. Fergusson the discredit to suppose, that he could believe, after the evidence he had heard, that it was so

so unfit that justice should make any other demand upon Mr. O'Connor—that it was fit that he should forcibly resist the execution of that demand if it was made. I must give him credit for his professional knowledge; I must give him credit for the accurate knowledge which he must have had upon the occasion.

But, Gentlemen, it does not rest there; for the officer being charged to arrest Mr. O'Connor, the fact was made known to the Court; and the learned Judge who presided there, I mean Mr. Justice Buller, whose absence I cannot but lament, when I recollect that that absence is occasioned by extreme illness—Mr. Justice Buller expressly stated, that the prisoners were not to be discharged; and expressly directed, that all the prisoners, except that one upon whom sentence of death was to be passed, should be kept back for the present. This was, therefore, a distinct notice, that there was an act to be done upon the part of the Court.

Now, Gentlemen, be so good, without my entering into a detail of that evidence, to attend to the circumstances as to the conduct of the different defendants, during the time the learned Judge was executing the painful duty of passing the sentence of death—giving your attention also to what was the conduct of the several defendants, when this notice had been publicly given in Court, the moment that that sentence was finished; and unless I am deceived, indeed, with respect to the effect of that evidence, you will have no difficulty in coming to this conclusion, that those defendants did mean to take Mr. O'Connor out of the reach of the demands which it had been publicly declared justice had upon him.

Gentlemen, I do not know how the defendants are to deliver themselves from this charge; because I will give any case to my learned Friend that he chooses to ask of me; I will suppose that he was absolutely discharged; I will admit, that, under a misconception that there was no other demand of justice upon him, they supposed he ought to be liberated immediately under the circumstances in which he stood, and that that was a mistake, a misapprehension; but, Gentlemen, what is to become of the justice of the country, if such an example is to be set, that a Peer of this realm, and a learned Gentleman in my own profession, together with these other Gentlemen named in this record, shall take the justice of the country into their own hands?—that you shall hear, in a Court of Justice, men saying to a prisoner, “Spring!” Another, “Put out the lights!”—In fact, the lights were put out, and a great deal of confusion ensued, which, if it had not been met with a great deal of spirit by the witnesses who will be called to you, no man could be answerable for what might have been the serious consequences attending it; and the duty imposed upon me is this—to take care of you—to take care of the learned Judges—to take care of all
who

who have either acted in the administration of justice, or who are present with those who are acting in the administration of justice; and I should have been deeply responsible if I had not instituted this prosecution, whatever may be your verdict upon the circumstances of the case, as a public lesson to all mankind that the Courts of Justice must be treated with respect.

Gentlemen, I presume we shall have evidence given, and it is very fit that it should be given, whether these acts were done intentionally, or under a misconception. It may admit of an explanation of that sort—with reference to which, I beg leave to call your attention to circumstances very material for that attention, when you are determining upon the character of the acts done by the defendants, and the view with which they did those acts. It will be, for instance, for Mr. Fergusson to explain what could put into the hands of a professional man a stick, with which he attempted to strike at those who were executing their duty; it will be for him to explain what was the meaning of the expressions which he used: And with respect to the Noble Lord Thanet, I shall prove to you, that when advice was given to him that it would be better for him, in the high and great situation which he held, to recommend a peaceable demeanour, to endeavour that the quiet of the Court should be kept, that that Noble Lord expressed himself to this effect, “It is but fair that he should have a run for it;” and when you couple that expression as it will be proved by respectable witnesses, with his acts as they will be proved by respectable witnesses, I think you can have no doubt what was the character of the acts, and what the intention of that Noble Lord.

Gentlemen, having thus stated the circumstances, I shall proceed to call the witnesses. I am perfectly sure that you will give that attention which is due to the public and to the defendants. It is not for the interests of justice, unquestionably, that any man should be convicted who ought not to be convicted; you will hear, therefore, the evidence with as favourable an eye to the several defendants as the nature and interests of justice will permit: but, on the other hand, I am sure you will remember, that no station or rank in life ought to protect any man from the operation of law; and in truth, in a moral view, the higher the situation of men who are guilty of offences of this nature, the higher the offence is, the more that offence calls for punishment.

EVIDENCE FOR THE CROWN.

John Stafford sworn.

Mr. Law—My Lord, I only call this witness at present, for the purpose of producing a copy of the record: I shall afterwards examine him more at large.

Q. You are clerk to Mr. Knapp, clerk of assize on the home circuit?

A. I am.

(Produces a copy of the record of the conviction of O'Coigly, and of the acquittal of O'Connor and others.)

Q. Have you examined it?

A. I have.

(It was read by Mr. Barlow.)

Mr. Garrow—We proposed to have troubled Mr. Justice Heath; but as he is not yet come down, we will now call Mr. Serjeant Shepherd.

Mr. Serjeant Shepherd sworn, examined by Mr. Garrow.

Q. We have collected from the record, that you were one of the Commissioners appointed to try certain persons at Maidstone?

A. I was.

Q. Did you attend upon the Bench upon that occasion?

A. I did.

Q. Do you remember the circumstance of the Jury, after they had retired, coming into Court to deliver their verdict?

A. I do.

Q. Are you acquainted with the person of my Lord Thanet?

A. I am: I had seen my Lord Thanet examined as a witness on that day for Mr. O'Connor; I did not know his person before.

Q. Are you acquainted with the person of Mr. Dennis O'Brien?

A. I am.

Q. Are you acquainted with the person of Mr. Gunter Browne?

A. I cannot say I am: I knew Mr. Gunter Browne a great many years ago: I had no recollection of its being Mr. Gunter Browne—but I saw a person upon the table, after the riot was over, who was said to be Mr. Gunter Browne.

Q. Are you acquainted with Mr. Fergusson, a gentleman at the bar?

A. I am.

Q. Are

Q. Are you acquainted with Mr. Thompson?

A. I am acquainted with the person of Mr. Thompson; but I do not recollect seeing Mr. Thompson at Maidstone.

Q. Be so good as state to the Court, whether, after the Jury had given in their verdict, and judgment of death had been pronounced upon the prisoner who was convicted, you made any observation upon any of these persons, or their conduct?

A. After the Jury had given their verdict, and indeed, I think, at the time the Jury gave their verdict, my Lord Thanet was standing before the bar at which the prisoners stood, with his back to the prisoners, and his face of course towards the Court. I am not quite sure whether my Lord Thanet was on the bench at which the solicitors for the prisoners stood, or whether there was any space between the bench and the bar; that I could not sufficiently observe.

Mr. Garrow—It may not be improper here to state (and we shall certainly prove it), that there was no such space—I believe every body knows that the bench to which the learned Serjeant alludes, was made for the accommodation of the solicitors, and was as this may be, supposing this to be the bar, (*describing it.*)

Mr. Serjeant Shepherd—My Lord Thanet stood with his face towards the Court, and his back to the prisoners: he was rather to the right hand of O'Connor; I don't mean upon a line with O'Connor, of course, but rather to his right hand.

Q. May I interrupt you to ask, whether the right-hand side was the side upon which the jailor was placed?

A. I am not quite sure whether it was the side on which the jailor was placed: it was the side on which O'Coigly, the convicted prisoner, stood; and it was the side on which the Bow-street officers afterwards endeavoured to advance.

Mr. Erskine—The side nearest to the great street of Maidstone?

Mr. Garrow—Certainly so, which is the side on which we all know the jailor is placed.

Q. You recollect the jailor has a box on that side next the great street?

A. I recollect he has, and therefore it was certainly on that side on which the jailor was placed. Mr. O'Brien stood, or sat, at that time, I don't exactly recollect which—but Mr. O'Brien was on the same line with Lord Thanet, but rather to the left hand of Mr. O'Connor. Whether there was any person between my Lord Thanet and Mr. O'Brien, I do not recollect.

Q. When I interrupted you, you was about to state something of the Bow-street officers advancing?

A. I think something had been said before the Jury brought in their verdict. When there was an expectation that they were

were coming, something had been said about the Bow-street officers being there. There was a sort of noise or buzz in Court; and somebody said, I don't know who, that the Bow-street officers were making a noise. In consequence of that it was that I observed one of the officers, I think Rivett—it was either Fugion or Rivett; I am not quite sure that I recollect the person of one from the other —

Q. You had seen them and heard them give evidence?

A. I had, and I rather think it was Rivett, who I observed standing at the corner of the bar; and they were desired to be quiet—not particularly the Bow-street officers, but the Court desired that every body would be quiet; and they were quiet; and the Jury then brought in their verdict. When the Jury pronounced their verdict of Not Guilty upon Mr. O'Connor, some person, but whom I don't recollect, said, "Then they are discharged;" other persons sitting round the table said, "No, they are not discharged;" and at that time Mr. O'Connor, I think, had raised his knee to the bar, as if to get over: whether he was pushed back, or pulled back, I don't know; but he was restored to his former position behind the bar. A question was put to the Court, by somebody—whether by the prisoners, or the counsel for the prisoners, or by-standers, I cannot tell—but some one said, "Are they not discharged, my Lord?" or, "Have they not a right to be discharged?" or some such terms. Mr. Justice Buller, I think, said, "No, they are not to be discharged yet; put the other prisoners back, and let O'Coigly stand forward:" I don't pledge myself for the exact words, but certainly to that effect.

Q. I will trouble you to repeat that, according to the best of your recollection?

A. "Put the other prisoners back, and let O'Coigly (who was the convicted prisoner) stand forward." I should have told your Lordship, that when it was asked, "whether they were not to be discharged," before the riot, if I may so speak, began, one of the Bow-street officers, I think, got up upon the bench, or form I should rather say, and said, "No, my Lord, I have a warrant against Mr. O'Connor;" whether he added for Treason, or for High Treason, I do not recollect. It was immediately upon the officer's saying that, that Mr. Justice Buller said, "They are not discharged:" I don't mean, in answer to that; but he said as a direction of the Court, "They are not discharged; put the others back, and let O'Coigly stand forward."

Q. I would ask you, whether that form upon which the officer raised himself to address the Court, was near the place where, as you before described, the Bow-street officers were, before the bar, and near Lord Thanet?

A. Certainly; he set his foot upon the end of the form before
D which

which Lord Thanet stood, with certainly, I think, the interval of three or four persons.

Q. Was that expression of the officer's addressed audibly to the Court?

A. Certainly; I heard it most distinctly, and, I think, every one must have heard it.

Q. Did he produce a paper?

A. Yes; he said, "No, my Lord, they are not to be discharged; I have a warrant against Mr. O'Connor;" and he certainly extended his hand with a paper in it.

Q. After that direction had been given by the Court which you have stated, what then passed?

A. Mr. Justice Buller proceeded to pronounce sentence upon the prisoner O'Coigly. During the first part of the time that he was pronouncing sentence, my attention was particularly attracted to O'Coigly the prisoner—I was looking at him, and attending to him.

Q. The form of the sentence was introduced by a prefatory address?

A. Yes. During the former part of it, my attention was directed to him. Towards the conclusion of the sentence, I think just as Mr. Justice Buller came to that part of the sentence which pronounces the specific punishment, I observed Lord Thanet and Mr. O'Brien standing in the same position as they had stood before, and I observed Mr. O'Brien turn round, and look up at Mr. O'Connor—I wish, my Lord, here only to state what I saw, and not what my conjecture or construction was upon it.

Q. I may take the liberty, however, of asking you, whether what you saw made an impression upon your mind? What that impression was, I shall not ask.

A. It did: he looked up at Mr. O'Connor, and then looked down to the place before him, which cannot be so well expressed in words as by an imitation of the manner; he looked down with a very slight motion, certainly an inclination of his head. Lord Thanet was standing with his back against the bar, behind which Mr. O'Connor stood. I can describe it no other way than standing square as I do now. I did not see Lord Thanet make use of any motion or gesture, at that time, certainly. The moment the last word of the sentence had been pronounced by Mr. Justice Buller, the instant he had finished, Mr. O'Connor raised himself upon the bar: he jumped with his left foot upon the bar; he put his hand upon the shoulder of Mr. O'Brien, and, I think, his right upon Lord Thanet's shoulder, jumped over the bar between Lord Thanet and Mr. O'Brien, passed Mr. O'Brien towards the door of the Court, which was on that side next the small street of Maidstone —

Q. That is, from the Bow-street officers?

A. Yes:

A. Yes: then I lost sight of Mr. O'Connor. Whilst Mr. O'Connor was getting over the bar, which, though it takes some space to describe, was done almost in an instant, the Bow-street officers were pressing, endeavouring to get towards him, for the purpose of stopping him, I suppose.

Q. That is, in the narrow pass between the back of the seat for the counsel for the prisoners, and the bench that was made for the accommodation of their solicitors?

A. Yes. Lord Thanet certainly stood in the position in which I had observed him. There was a great noise, of course, took place at that time, at the moment that Mr. O'Connor was getting over the bar; and some people calling to stop him, there was a great noise certainly. Lord Thanet stood, in the way that I have described to your Lordship, in the pass: the officers were endeavouring to press by him; and he stood till, I think, in a very short space of time, he held up his stick with both his hands over his head. There was then a great deal of confusion: persons got upon the table; and there was a press, in the narrow pass, of officers and persons from that side of the Court, attempting to press towards the door to which O'Connor had rushed; and other persons, whom I cannot say, appearing to me to push the other way, as if to prevent them from passing. I saw sticks raised, and fists raised, by individuals; but who did so, I cannot speak to. There became then a general confusion in that part of the Court, so that I lost sight of particular individuals: the candles were some of them thrown down; they were upon the table; and there was a general riot and confusion, certainly, in that part of the Court, and in most other parts of the Court: at that time a great number of persons had got upon the table, and there was certainly a great deal of confusion. In a very short time, somebody called out, "O'Connor is stopped;" and he was brought back again to the bar. I should state to your Lordship, that, just at the time that I lost sight of Lord Thanet, and of the particular individuals, a person had got upon the table, which drew off my attention from what was going on at the bar, and had drawn a sabre which was lying there.

Q. That was part of the baggage of Mr. O'Connor, which had been produced upon the trial?

A. It was. He drew that sabre, and placed himself between the Judges and the part of the Court where the confusion was, obviously to prevent any persons from advancing towards the Judges—if I may use the phrase, to defend the Judges. I did not at that time see the face of the person who had it; and therefore I had some apprehension it might be in the hands of some imprudent man, who might do mischief: if I had known who it was, I should have known that he had discretion enough not to misuse it.

Q. It

Q. It was Mr. Stafford, the witness—was it not?

A. Yes. I said to him, not seeing his face, "Don't strike." When I saw who it was, I was satisfied. After the riot had ceased, a number of persons got upon the table towards the Judges—some to ask questions upon the subject of the legality of this warrant; and others, whether the prisoners were not entitled to their discharge; and others, certainly, to allay the fervor that seemed to be at that time operating upon the minds of many persons who were in Court—to restore order, in fact; I should, perhaps, use that phrase. The particular conversations and expressions that were used by any of those persons upon the table, I cannot pledge myself to recollect.

Q. I will take the liberty of asking you, I believe you was at a distance from the learned Judge, Mr. Justice Lawrence?

A. I was: Mr. Justice Heath and Mr. Justice Buller both sat between me and Mr. Justice Lawrence?

Q. Therefore I would ask you, whether you had an opportunity of hearing any particular conversation addressed to the learned Judge who is now present?

A. No: I think I remember Mr. Sheridan speaking to Mr. Justice Buller, or Mr. Justice Heath, or both; and I remember Lord Thanet being upon the table after Mr. O'Connor was brought back, apparently to me conversing with the learned Judge, Mr. Justice Lawrence.

Q. What he said, you did not hear?

A. I did not; for at that time there was a great deal of noise in the Court.

Q. Was it after that, that you observed Mr. Sheridan talking with the learned Judge?

A. I think it was: the object of Mr. Sheridan seemed to be to allay the tumult; and then he crossed the table, and conversed with the learned Judges.

Q. After the direction which you have stated to have been given by the Court, and after the sentence of death had been passed, was any order given by the Court for the discharge of Mr. O'Connor, or any intimation that he was to be discharged?

A. Certainly not; but it was broadly expressed by the Court that he was not to be discharged.

Cross-examined by Mr. Erskine.

Q. I have very few questions indeed to put to you. You state, that when the verdict of Not Guilty had been pronounced, some persons, but whom you do not know, seemed to inquire, as if for information, whether the prisoners were to be discharged or not?

A. Not quite so—not to inquire; but some persons exclaimed, "Then they are discharged."

Q. Who

Q. Who those persons were, you do not know?

A. I do not.

Q. You say that you observed Lord Thanet standing fronting the Court, as I am now fronting the Court?

A. Yes, certainly.

Q. With his back to the prisoner?

A. Certainly so.

Q. He was in that position when the Jury came in with their verdict?

A. I think so.

Q. You have observed that Mr. O'Brien looked round to Mr. O'Connor, and then looked down as you have described it: Did Lord Thanet continue all that time in the same position?

A. The time when Mr. O'Brien looked round, was a very short time before Mr. O'Connor jumped over the bar: from that time, certainly, Lord Thanet had continued in the same position, standing as I described.

Q. While the learned Judge was passing sentence of death upon O'Coigly, did Lord Thanet still continue in the same position?

A. Certainly he did.

Q. He was standing, as you observed, not looking this way towards the jury-box, or that way towards the narrow street, but he was looking towards the Court?

A. Certainly; he had his back against the bar, and looking directly towards the Court.

Q. You then describe, that upon the officers coming in, and pressing through this narrow place, the next that you saw of Lord Thanet was with a stick with both his hands up?

A. Yes: I did not mean that the officers came in then, but that they had come in some time before having declared that they had a warrant; but, certainly, upon Mr. O'Connor jumping over the bar, the officers rushed forward to follow him: after they had made several pushes it was that I saw Lord Thanet in that position.

Q. Did you ever observe any change in the position of Lord Thanet, from the time you first saw him, till you saw him in the situation you have now described to the Court?

A. I did not observe any change.

Q. But a stick over his head?

A. Yes; and, perhaps, I should say this—it seemed to me, when he held it in that way, that it was to defend his head.

Rev. William Hufsey sworn, examined by Mr. Adam.

Q. I believe you are a clergyman of the Church of England?

A. I am.

Q. Were

Q. Were you at Maidstone, at the trials of Mr. O'Connor and Mr. O'Coigly?

A. I was.

Q. Were you there at the time the Jury were out deliberating upon their verdict?

A. Part of the time.

Q. Were you in Court at the time they returned with their verdict?

A. I was.

Q. Do you remember seeing Lord Thanet in Court at that time?

A. I saw Lord Thanet in Court.

Q. In what part of the Court was you placed?

A. At that immediate period of time, I cannot expressly say in what part; I saw Lord Thanet in two different parts of the Court.

Q. In what part of the Court did you first see Lord Thanet?

A. The first time when he came to give his evidence, and the next time at the table fronting the Judges, and afterwards sitting under the bar at which the prisoners stood.

Q. Upon a bench, with his back to the prisoners?

A. With his back to the prisoners.

Q. Do you remember seeing the Bow-street officers there?

A. I saw a person who, I was informed afterwards, was a Bow-street officer: I did not know, at that period, that he was a Bow-street officer.

Q. Do you recollect the Jury delivering their verdict?

A. I do.

Q. Can you state, to my Lord and the Court, any thing that struck your attention upon the Jury delivering their verdict of Not Guilty with respect to Mr. O'Connor?

A. After the Jury returned their verdict of Not Guilty, I observed Mr. O'Connor make a feint to get over the bar; he put up his foot as if he would get over.

Q. Did you observe any thing more pass at that time?

A. I cannot speak expressly as to the direct period of time at which I saw the circumstance happen; whether it was at that period, or a future period, I must say that I cannot immediately recollect.

Q. What was that circumstance?

A. That the Earl of Thanet was in that situation which I before mentioned, sitting with his back towards the bar, nearly under the prisoners, or under the jailor, and as the person was pressing forward from that side of the Court to get towards the prisoners.

Lord Kenyon—What person?

A. I cannot say who the person was; I was informed afterwards he was a Bow-street officer: and, indeed, from the circumstance of his mentioning to the Jury what was the mat-

ter—

ter—he said he had a warrant to apprehend Mr. O'Connor—I supposed him to be a peace-officer.

Mr. Adam—Then, as this person, who held a paper in his hand, and pressed forward —

A. I saw no paper in his hand; *Lord Thanet* seemed to press himself against the bar with his body inclined somewhat towards that person, apparently with an intention to interrupt his progress towards the prisoner.

Q. In what situation was Mr. O'Connor at that time?

A. Mr. O'Connor, at that period, was standing at the bar.

Q. Go on, and state what you saw after this?

A. Upon my word, from the confusion that was in the Court, I do not recollect any particular circumstance that I can take upon me to speak to.

Lord Romney sworn, examined by Mr. Wood.

Q. Was your Lordship in Court at the time of the trials of the prisoners at Maidstone?

A. Yes.

Q. In what part of the Court did your Lordship sit?

A. Next to Mr. Justice Lawrence, upon the bench.

Q. Does your Lordship know the defendant Mr. Fergusson?

A. I did not know Mr. Fergusson before the trials at Maidstone: I had seen him so often then, that I knew him in his gown; if I was to see him out of his gown, I do not know that I should know him—I knew him perfectly in his gown.

Q. After the riot began, what did your Lordship observe?

A. When the riot first began, I looked very much towards the prisoner O'Connor, and saw him get over the bar, and go towards the narrow street. I looked at the other part of the Court, where there were individuals forcing a passage through, which were the Bow-street officers; I saw them forcing their way, and blows were struck. I paid particular attention to Mr. O'Connor, and then, almost at the same moment, turned my eyes to a different part upon the table, where there was a sword brandishing about: I don't know whether it was drawn or not, for I could not see at that time; but I should imagine it was drawn: upon which I thought things seemed to bear a very serious aspect, and I let myself down from the bench where I was sitting, and crossed the table directly to where I saw the prisoner escaping from. I dipped my head under the broad sword that was brandishing about: I got immediately to the end of the table, near that part of the Court where the prisoner escaped from; and as soon as I got there, I immediately saw the prisoner O'Connor brought back to that part of the table by several javelin-men and others. I then immediately said to the javelin-men, "Form yourselves round the prisoner, and let no one approach you, or let no one come round

round you," or words to that effect; "for he is not yet," I meant to say, and imagine I did say, "discharged." I was told afterwards that I had said wrong—for I had said, he was not acquitted; upon which I answered, I might very possibly make use of the word *acquitted*; but, if I did, it was a mistake; I meant *discharged*.

Mr. Garrow—Will your Lordship mention who it was that said that?

A. I think it was Mr. Fergusson: he said, "My Lord, you are mistaken; you said, 'he is not acquitted'—he is acquitted." I think it was Mr. Fergusson. I had no doubt myself, as Mr. Fergusson mentioned it, but that I did make use of the word *acquitted*, in the hurry; I have no doubt of it: it was not my intention to say he was not acquitted, but that he was not discharged; I meant to make use of the word that I heard Mr. Justice Buller make use of from the bench.

Mr. Wood—Does your Lordship recollect whether the Court had said any thing, before that, about his not being discharged?

A. Yes; and I meant to make use of the word *discharged*, because I had heard Mr. Justice Buller use the word *discharged*.

Q. Publicly in Court?

A. Yes: I had no private communication with Mr. Justice Buller at all, because Mr. Justice Lawrence sat between us.

Q. Did your Lordship notice any particular persons that were acting in the riot?

A. Really I felt myself so engaged in a thing of this sort, and I should have been so much hurt if, in the confusion, any disgrace had been brought upon a Court of Judicature generally, and for myself in my situation in the county of Kent in particular, that I did not take such notice of the circumstances that were taking place, as I did to take care, with others, to prevent a rescue, which I should have considered an indelible disgrace and stain upon our county. I certainly could not say who it was in the passage that was struck by the Bow-street officers; for when I looked to that part, the confusion was very great, and the blows very frequent in that part.

Q. Did your Lordship hear any conversation between Lord Thanet and Mr. Justice Lawrence, after Mr. O'Connor was secured?

A. It is really a very considerable time since the riot; and, at the same time, as many different things were going on at that moment, I cannot positively swear; and therefore, unless I was perfectly convinced, it can be of no consequence.

Lord Kenyon—It is my duty, and I am bound, to say, your Lordship must recollect as well as you can?

A. If your Lordship will give me leave to say, that at this distance of time, ten or eleven months, I really cannot swear whether

whether I heard it at the time, or whether it was a conversation afterwards, that such and such things had passed; and therefore, as I cannot answer positively, I must, for myself, beg leave to decline answering it. I certainly had forgot it; and some time past, three or four months ago, after considering with myself, I thought I did recollect something of such a conversation passing: but it certainly had for some time slipped my memory; and therefore, without I could absolutely ascertain it, I cannot speak to it; there was a great deal of confusion.

Cross-examined by Mr. Gibbs.

Q. You say, you intended to say that the prisoner had not been discharged; but you had been informed by some one, that you had said he was not acquitted; and then you corrected yourself, and said you meant to say *discharged*.

A. I have no doubt but that, in directing my speech to somebody in the hurry of the business, I said he was not acquitted.

Q. There was but one person that said that?

A. Mr. Fergusson said it repeatedly; and then I said, "I meant to have said *discharged*—if I had said *acquitted*, it was a mistake;" and then Mr. Plumer came up, and I told him that Mr. Fergusson had said so.

Lord Kenyon—There can be no occasion to go into all that conversation.

Mr. Gibbs—All I wish to have the honour of asking your Lordship is this—There was a person who said to your Lordship, "You have said he is not acquitted;" and then you corrected yourself?

A. Yes; and that person, to the best of my knowledge and belief, was Mr. Fergusson; and I told Mr. Plumer that Mr. Fergusson had said it repeatedly: three or four might have repeated it in the confusion of the Court; I could not distinguish voices.

Sir John Mitford sworn, examined by Mr. Fielding.

Q. Have the goodness to describe what was your particular situation in the Court at Maidstone?

A. You mean after the Jury had withdrawn, I suppose?

Q. If you please.

A. I went up to Mr. Justice Buller, and spoke to him; and then I placed myself immediately under him, opposite to Mr. O'Connor, upon whom I kept my eye fixed when the Jury came into Court and gave their verdict. I observed Mr. O'Connor and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the bar: I called out, "Stop him." Mr. Fergusson said, "He is discharged." I
said,

said, "He is not discharged." Mr. Fergusson then addressed Mr. O'Connor, and said, "You are discharged." I repeated, "He is not discharged," I believe more than once. I observed the jailor leaning over towards Mr. O'Connor, and I think he took hold of him.

Mr. Garrow—The other prisoners were between the jailor and Mr. O'Connor, were they?

A. Two of them were, and the other two behind Mr. Binns and Mr. O'Coigly; and then Mr. Allen and Mr. Leary were behind. Then Mr. O'Connor drew back his leg: there was then a disturbance immediately under Mr. O'Connor, and some person or persons pressing forward, and Mr. Fergusson made some complaint to the Court upon the subject; then Rivett the officer, who appeared to be the person pressing forward, said —

Mr. Fielding—When you say *pressing forward*, in what kind of direction was that pressure?

A. Towards Mr. O'Connor.

Q. That was not forward towards the body of the Court, but towards Mr. O'Connor?

A. It was towards the body of the Court, in order to get to Mr. O'Connor, and place himself under Mr. O'Connor, as I conceived. Rivett said he had got a warrant against Mr. O'Connor; and the jailor also said something upon the same subject, but I do not recollect the particular words; and Mr. Justice Buller spoke to the officers, as I understood, to keep the prisoners back, or some expression of that description, and then almost instantly began addressing Mr. O'Coigly.

Lord Kenyon—With a view to pass the sentence?

A. With a view to pass the sentence. I recollect that this was almost instantaneous; because I was about to speak to the Court—and it was so sudden, that I thought it was indecent to interrupt Mr. Justice Buller, otherwise I should have spoken to the Court.

Mr. Garrow—Mr. Attorney General had retired from the Court?

A. He had retired from the Court, and had desired me to speak to Mr. Justice Buller upon the subject, which I had done after Mr. Justice Buller had passed sentence upon Mr. O'Coigly. I fixed my eye particularly upon Mr. O'Connor, and I observed Mr. Fergusson, and some other persons whom I did not know, encouraging Mr. O'Connor to go over the bar. Mr. O'Connor appeared for a little while to hesitate, but it was only for a moment: he then sprung over the bar, and leaped into the lower part of the Court, between the bar and the jury-box, which was on the right hand of the Judges. From that time I did not see Mr. O'Connor until he was brought back by the officers; for at the same instant that Mr. O'Connor jumped over the bar, three or four persons whom I did not know, leaped over from the box opposite the jury-box upon the table.

Mr.

Mr. Garrow—Was that box the box where the witnesses had been examined?

A. Where the witnesses had been examined, and where persons who attended the trial through curiosity had been. They went to the spot where the riot was, and jumped amongst the rioters: all the lights, except those before the Judges, and the lights which hung in the middle of the Court in a kind of branch or chandelier—I do not recollect exactly what sort of a thing it was; it gave a considerable light—but all the other lights were extinguished.

Mr. Garrow—The chandelier that hung over the prisoners?

A. In the middle of the Court: there were, I think, three patent lamps in it—it gave a great deal of light. *Mr. Ferguson*, at the moment that *Mr. O'Connor* jumped over the bar, turned himself round, and appeared to me to follow *Mr. O'Connor*; but I cannot positively say that he did so, because the persons who rushed from the other side of the Court came between me and him; but I recollect that when they were past I did not see him. I then attended to the prisoner *O'Coigly*, apprehensive that he might escape; and that attracted my attention in some degree from what was passing in the riot: he was perfectly tranquil; and I was convinced, from his behaviour, that he did not mean to stir; and therefore my attention was drawn back again to the riot. *Mr. Knapp's* clerk, *Mr. Stafford*, jumped upon the table, and drew *Mr. O'Connor's* sword—a kind of broad sword, I think—which was lying upon the table; and he flourished it over the heads of the persons who were engaged in the riot below. I got up to speak to him, to desire him to put up the sword, which, after some time, he did; and soon after *Mr. O'Connor* was brought back. *Mr. Stafford* being between me and the rioters, prevented me from seeing what passed after the riot was over. I do not recollect any thing material, except *Lord Thanet*; that is, a person whom I understood to be *Lord Thanet*. I did not know *Lord Thanet's* person; that is, I did not recollect him: I had seen him many years ago. I saw a person, who I understood to be *Lord Thanet*, come across the table; and I saw him in conversation with *Mr. Justice Lawrence*: that conversation was a little warm, but I did not hear the particulars of it. When my *Lord Thanet* left *Mr. Justice Lawrence*, and went across the table again, I heard him say, "I thought it was fair he should have a run for it."

Q. Was that addressed to the Judge in parting from him and going across the table?

A. I think it was not addressed to the Judge, but as he turned from the Judge: he said it rather in a tone of anger; I think it was in consequence of what had fallen from *Mr. Justice Lawrence*, which I did not exactly hear.—I do not recollect any thing else.

Mr.

Mr. Fielding—*Will you have the goodness to explain what you meant by encouraging Mr. O'Connor to get over the bar?*

A. *It was not immediately encouragement, by any words that I could hear; but by action, as if he was encouraging him to come over the bar, and by insisting that he was discharged.*

Cross-examined by Mr. Best.

Q. *While Mr. Fergusson was speaking to Mr. O'Connor, he was in his place at the bar?*

A. *He was.*

Q. *There was a vast number of other persons at the same time speaking to Mr. O'Connor?*

A. *Yes.*

Q. *I believe it was generally understood in the Court at that time, that Mr. O'Connor would be acquitted?*

A. *I do not know whether they were congratulating him; it was after he was acquitted.*

Q. *You say he was in his place at the bar: do you recollect ever seeing him quit his place at the bar?*

A. *I have already said, I think he did: I have already stated, I am not positive as to the time, but that I did not see him when the rush that passed between me and Mr. O'Connor was made.*

Mr. Justice Heath sworn, examined by Mr. Attorney General.

Q. *Your Lordship, I believe, was one of the Commissioners of Oyer and Terminer at Maidstone?*

A. *I was.*

Q. *Did your Lordship observe any riot that took place.*

A. *I did; and if you will give me leave, I will state all that I observed. I was applied to, in the course of the day, by a messenger from the Secretary of State, who informed me that a warrant was issued for the apprehension of Mr. O'Connor in case he should be acquitted, and desiring to know if the Court would permit him to execute that warrant if he should be acquitted; and we gave leave. After the verdict had been given, and, I believe, after sentence of death had passed, this messenger very unadvisedly went from that corner of the box where the prisoners were confined, to that corner which was near the door, and said aloud, "My Lord, may I now execute my warrant?" Presently after, I saw Mr. O'Connor thrust one leg over the box, and then draw it back again: afterwards, in the space of a minute, I saw him leap over the box. I could not see any person between him and the door at that moment: immediately a great scuffle and a riot ensued, and a great deal of fighting, such as I never saw before in a Court of Justice; it appeared to me to be between the constables with their staves*
on

on one side, and those who favoured the escape of O'Connor on the other. I know not from whence the favourers of Mr. O'Connor came; it being dark, I could not see exactly the number of the combatants; it was dark in that place where they were fighting: but, from the exertion of the constables in plying their staves, it seemed to me that there must have been ten or twenty, I suppose, all fighting together. I saw a man with a naked sabre, brandishing it over the heads of the combatants; one of the officers of the Court, I believe, came up to me with a brace of pistols, which, I believe, belonged to Mr. O'Connor, and lay upon the council-table, saying, "I have secured thee at last." This combat, I suppose, might last five, six, or seven minutes; I cannot exactly say how long: *but, in the course of it, I saw Mr. Fergusson standing upon the table, together with many others; he turned round towards the Commissioners, and said, I believe particularly addressing himself to me, "My Lords, the constables are the persons that are the rioters; they are the occasion of it," or words to that effect. Before I could give him an answer, he turned round again towards the combatants; it was impossible, from the noise, for him to hear any thing I could say to him: my attention was chiefly turned from him to the more interesting scene of the fight; but I must do him the justice to say, that, in the very short time I saw him, which was not above a minute or so, I did not observe him say or do any thing to encourage the riot. I thought myself in great danger, and that we were all so. I could not guess at the view of the rioters, how far it extended, or whether they had any and what arms; indeed we were more alarmed, because we had intelligence before-hand, that there was a very disaffected party in the town.—That is all I have to say.*

Charles Abbott, Esquire, sworn, examined by Mr. Law.

Q. Was you in Court when the Jury brought in their verdict?

A. I was.

Q. Did you observe any motion made by Mr. O'Connor towards quitting the bar?

A. I do recollect that Mr. O'Connor made a motion with his body as if he would leave the bar. *Mr. Fergusson, almost at the same instant, said, "He is discharged." Mr. Solicitor General then called across the table, "No, stop him, he is not discharged."* Just at the same instant, one of the officers, either Rivett or Fugion, but I cannot say which, got upon the form and pressed forward towards Mr. O'Connor, and at the same time said he had a warrant; there was then a little confusion for a short space of time, but not very long; the prisoners resumed their places, and Mr. Justice Buller proceeded to pass the

the sentence upon Mr. O'Coigly. During this time I had been sitting almost immediately under Mr. Justice Buller, very nearly so. At the very instant that Mr. Justice Buller had closed the sentence, I observed Mr. O'Connor leap over from the bar towards his left hand; a very great tumult and confusion immediately took place; and, shortly afterwards, I saw a person, whom I soon learned to be Mr. Stafford, drew a sabre, and went to that corner of the table where the confusion was. Mr. Garrow cautioned him not to strike; and he did not appear to aim the sabre at any body, but merely to keep it moving over their heads. When this second tumult began, I rose up and stood upon the form upon which I had been sitting, so that I was standing before Mr. Justice Buller and Mr. Justice Heath, with my back towards them: when the confusion began to abate, I turned round, and entered into some conversation with Mr. Justice Buller; and soon after this, while I was in that situation, I saw my Lord Thanet standing on the table, nearly before Mr. Justice Lawrence, which was towards my right hand. *I heard Mr. Justice Lawrence speak to Lord Thanet to this effect—"I think it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to the prison, lest some mischief should happen:" I do not pretend to state the learned Judge's words; but the substance, I believe, I am correct in.* Lord Thanet then turned abruptly round towards his right hand, which brought his back towards me; and I did not distinctly hear the first words that he uttered, but the concluding words were either "to have a run for it," or "fair to have a run for it." *I will not be quite certain of the word "fair;" but of the words "to have a run for it," I am quite certain.* I have the more particular recollection of this, because, shortly afterwards, I observed Mr. Sheridan at the same part of the table, and heard Mr. Justice Lawrence speak to him to the same effect that he had before spoken to my Lord Thanet. Mr. Sheridan answered with great civility, either that he had done so, or that he would do it: it was the different manner of Mr. Sheridan to that of my Lord Thanet that made me recollect that.

Q. Do you recollect Mr. Justice Lawrence making an observation upon that?

A. Yes.

Mr. Erskine—To whom?

A. To Mr. Sheridan.

Q. In the presence of Lord Thanet?

A. No; he was gone: and I recollect that Mr. Justice Lawrence said to Mr. Sheridan, that he had made the same observation to another gentleman.

Mr. Law—Have you any doubt of the words spoken by Lord Thanet, "to have a run for it?"

A. I have not.

John

John Rivett sworn, examined by Mr. Garrow.

Q. Did you attend at Maidstone as a witness upon the trial of O'Connor and others?

A. I did.

Q. Was any application made to you by one of his Majesty's messengers to assist in apprehending Mr. O'Connor, if he should be acquitted by the Jury?

A. Yes, there was.

Q. Did you, in consequence of that, go into Court with a view to give that assistance?

A. Yes, I did.

Q. Who went with you?

A. Fugion, my brother-officer.

Q. He was another officer of the police?

A. Yes, and the messenger; we all three went into Court together.

Q. Is Fugion since dead?

A. He is.

Q. After you had gone into Court, do you remember seeing a gentleman of the name of Thompson?

A. I was informed that was the gentleman's name.

Q. Should you know him now if you was to see him?

A. I think I should: I have never seen him since—I was very near the bar where the prisoners stood.

Q. At which end of the bar was you? was you on the side the farthest from Mr. O'Connor, or the nearest?

A. Nearest to the jailor, which was the right-hand side of the bar.

Q. While you was in this position, had you any conversation with a gentleman you understood to be Mr. Thompson?

A. Yes.

Q. State it to the Court?

A. The gentleman whom I understood to be Mr. Thompson, a Member of Parliament, asked me, "what I did there?" I made him little or no answer. He then said, "What business have you here?" or words to that effect; "have you got any thing against Mr. O'Connor?" meaning, as I supposed, a warrant; I did not know what his meaning was; I replied, "No." I believe he asked Fugion likewise, to the best of my recollection.

Q. You and Fugion had been both examined as witnesses upon the circumstance of the apprehension of Mr. O'Connor?

A. We had.

Q. And, to the best of your recollection, Mr. Thompson put the same inquiry to Fugion?

A. He did.

Q. What then passed?

A. I then observed a gentleman, whom I knew to be Mr. O'Brien,

O'Brien, at the farther end of the Court; I observed Mr. O'Brien whispering something to Mr. O'Connor over the bar.

Q. Describe particularly where Mr. O'Brien was placed during that time?

A. He was on the left-hand side of the bar, by Mr. O'Connor; I was on the right-hand side, and he on the left: a few minutes might elapse, when Mr. Thompson put up his finger to catch the eye of Mr. O'Brien, and beckoned to him; a few minutes might elapse, when Mr. O'Brien came to the same side where I stood.

Q. Did Mr. Thompson still continue standing by you?

A. Yes, he did.

Q. How long was this before the verdict was given?

A. Whilst the Jury were out considering their verdict.

Q. When Mr. O'Brien came to the place where you and Mr. Thompson were standing, what took place?

A. Mr. O'Brien and Mr. Thompson spoke to each other; but what they said I cannot tell. Mr. O'Brien then addressed me, and said, "Have you got a warrant against Mr. O'Connor?" I said, "No." Then he said, "Then Fugion has."

Q. Do you mean that he made use of Fugion's name?

A. Yes; Fugion was present, and he answered immediately that he had not. He said, "Fugion, have you got the warrant?" He addressed himself to Fugion; Fugion said, "No." Then Mr. O'Brien said, "Then the messenger has."

Q. Had Wagstaffe his badge as King's messenger on at that time?

A. I do not recollect.

Q. Do you mean to say that he addressed himself to the messenger?

A. No; he said, "Then the messenger has." I then replied, "I can answer only for myself." Mr. O'Brien then said, "I will bet you three guineas," I think it was, to the best of my recollection, "that you have." Fugion said, "Done," I believe, or words to that effect. Mr. O'Brien then left the side of the Court that I was on, and returned to the left-hand side where Mr. O'Connor was, and whispered something to Mr. O'Connor; but what, I cannot tell.

Q. What observation did you make at that time, with respect to any other persons in the Court, as to any change of position?

A. It remained quiet till the Jury were coming in: a number of gentlemen seated themselves directly before me in the place where I stood.

Q. That was upon the bench made for the prisoners' attorneys?

A. Yes.

Q. Many gentlemen seated themselves there?

A. Yes.

Q. Did

Q. Did you know any of those persons?

A. Not that were sitting down before me; some time had elapsed, when there was some noise when the Jury were coming into Court, "Make way for the Jury," or something to that effect. I then endeavoured to get as nigh Mr. Watson, the jailor, as I possibly could. I went to step my foot up to get nigh the bar, and I was pulled down again by my leg; I turned round, and the person who pulled me down, I supposed, was Mr. Thompson.

Q. Do you mean to say, you know it was Mr. Thompson; or, from the situation he was in, that you apprehended it was Mr. Thompson?

A. Exactly so.

Q. You do not aver the fact positively?

A. No: but when I turned round, he was close to me.

Q. And therefore you conclude he was the person that pulled you?

A. Yes: the Jury then came in, and I endeavoured to get up again as near the bar as I possibly could.

Q. When you use the expression, that you endeavoured to get up as near the bar as you could, was there any thing that prevented you from getting there?

A. Only the gentlemen sitting there.

Q. With what view was that?

A. With a view to assist in securing Mr. O'Connor, if he should attempt to make his escape.

Q. Upon your endeavouring to get as near the bar as you could, what happened?

A. The Jury were in, and the Court called "Silence." The Jury had given their verdict—Mr. O'Connor and the others, Not Guilty; and Mr. O'Coigly, Guilty; and then I got up nigh the bar. I observed something in Mr. O'Connor that struck me as if he meant to make his escape; at that moment there was some noise in the Court, and Mr. Fergusson says, "What business has that fellow there, making such a noise?"

Lord Kenyon—Who was that addressed to?

A. It was addressed to the Court, I believe. Upon that I got up upon one of the benches, and addressed the Judge, and told him my reasons for being there. I told his Lordship I had a warrant from the Duke of Portland to arrest Mr. O'Connor; the Judge replied, "I should have him," or words to that effect; and desired the jailor to take care of all the prisoners for the present.

Q. Which of the Judges was that?

A. Judge Buller; then the sentence was passed upon Mr. O'Coigly. As soon as the Judge had so done, Mr. O'Connor immediately jumped out of the bar: there was then a very great confusion in Court; those gentlemen, who had so placed them-

selves before me, stood up; I called out, "Shut the door, shut the door," several times.

Q. After Mr. O'Connor had jumped over the bar, which way did he take?

A. He took to the left.

Q. He took the direction going from you?

A. Yes.

Q. That was, as we have been describing, towards the narrow street?

A. Yes; I then endeavoured to get forward, but was prevented by those gentlemen who had so placed themselves quite before me and Fugion and the messenger.

Q. Now describe particularly what passed which prevented you, with your assistants, from following Mr. O'Connor?

A. I was pulled down, or shoved down, twice or three times; but by whom, I am not able to say. I THEN JUMPED FORWARD AS WELL AS I WAS ABLE, AND WAS ENDEAVOURING TO PURSUE MR. O'CONNOR; MR. FERGUSSON JUMPED UPON THE TABLE, AND WITH A STICK FLOURISHED IT IN THIS WAY, TO PREVENT MY GETTING FORWARD.

Q. Flourished it over your head?

A. He flourished it with an intent, as I presume, to stop me.

Q. Was Mr. Fergusson in his professional dress?

A. Yes, he was; I THEN SPRUNG AT HIM, AND WRENCHED THE STICK OUT OF HIS HAND, AND HE RETURNED BACK TO HIS FORMER SITUATION.

Q. He went from off the table, and returned to his place at the table?

A. Yes; otherwise I should have struck him with the stick which I had wrenched from him, if he had not that moment got away.

Q. Describe what more took place?

A. AS SOON AS I RECOVERED MYSELF, I WAS THEN KNOCKED DOWN BY SOME PERSON WHO DROVE AGAINST ME—NOT WITH A STICK; AND AS SOON AS I HAD RECOVERED MYSELF, I SAW THE PERSON WHO HAD SO SHOVED ME DOWN; I IMMEDIATELY STRUCK HIM WITH MY STICK; I REPEATED MY BLOWS THREE OR FOUR TIMES; THAT PERSON CALLED OUT, "DON'T STRIKE ME ANY MORE." I REPLIED, "I WILL; HOW DARE YOU STRIKE ME." That person I so struck was, as I understood while I was in Court, the Earl of Thanet.

Q. Are you quite certain that the person you struck and repeated your blows with a stick, was the person who shoved you down?

A. Yes.

Q. And that person, whilst you continued in Court, you understood was my Lord Thanet?

A. Yes.

Q. Should

Q. Should you know his person now?

A. I think I should.

Q. Look round the Court, in all parts of it, and see if you see his Lordship here—is that the person you struck who sits next Mr. Gibbs?

A. I believe it is; I cannot positively say, because I have never seen the gentleman but once since that time.

Q. From the appearance of his Lordship, from his person and make, do you now believe him to be the person?

A. I cannot positively say.

Q. Have you reason to believe that that gentleman is the person?

A. I have some reason to believe so, FROM HIS SIZE.

Q. Did you afterwards, in the course of your continuance in Court, see Lord Thanet in any other part of the Court?

A. He was pointed out to me immediately after.

Q. Upon the spot?

A. Upon the spot.

Q. I don't know whether you recollect how he was dressed?

A. No, I do not.

Q. Who was the person that told you that the name or title of the person with whom you had the contest was Lord Thanet?

A. Mr. O'Connor, after being secured and brought back again into the bar.

Q. Mr. O'Connor gave the title of Lord Thanet to the person with whom you had had the contest?

A. Yes.

Lord Kenyon—Was it a conversation addressed by Mr. O'Connor to you?

A. It was.

Mr. Garrow—After you had given these blows to the person supposed to be Lord Thanet, what passed?

A. I observed Mr. O'Connor was in custody—he had been secured by the door-way: I then assisted in getting him back to the bar.

Q. You described just now, that when you was attempting to push on to prevent Mr. O'Connor escaping, you was interrupted by the persons who had placed themselves before you?

A. Yes.

Q. Do you mean that it was merely by the accident of their being there, or that they gave you any obstruction?

A. While the Jury were out, they came, and a great number more than had been there at the time of the trial, and placed themselves just before where I stood.

Q. Are you acquainted with Mr. Gunter Browne?

A. No, I am not.

Q. Do you remember any body remarkable in his appearance or person obstructing Fugion or Wagstaffe?

A. No, I did not observe it, I was so engaged myself.

Cross-

Cross-examined by Mr. Erskine.

Q. You have stated to my Lord and the Jury, that, from something that passed, you expected Mr. O'Connor to attempt to make his escape?

A. Yes.

Q. I take it for granted, that the apprehension that he wanted to make his escape, induced you to go forward?

A. Yes; I got as near the bar as I could.

Q. It made you more desirous with the other officers to push forward quickly?

A. Surely so.

Q. If you had had no reason to suppose Mr. O'Connor was endeavouring to escape, and that others had a disposition to assist him, I take it for granted you would have gone on more leisurely?

A. No doubt.

Q. But the apprehension that you had, that you might be disappointed in the execution of your warrant, made you go on with considerable rapidity?

A. I went swifter than I should have done if I had not been molested, no doubt.

Q. The line that you was going in at that time, was a place not very unlike where I am standing now, immediately before the prisoners?

A. Yes.

Q. That is to say, a place like that I am now standing in, divided by something like this from the place where the Counsel sat?

A. Just so.

Q. You say that you jumped forward as well as you was able, and was endeavouring to pursue Mr. O'Connor, when Mr. Fergusson jumped upon the table, and with a stick flourished in this way, to stop you?

A. Yes.

Q. That was the first obstruction you met with?

A. No; I was pulled by the leg.

Q. But, except that pulling by the leg, after you pursued your progress through the Solicitors' box, the first interruption you met with, was by Mr. Fergusson jumping upon the table?

A. No; I had been pushed down before that.

Q. Had you struck any body before that?

A. No.

Q. Had you shoved or pushed any body?

A. I cannot tell that; in the confusion I might.

Q. You had not seen Lord Thanet till after this had passed with Mr. Fergusson?

A. To my knowledge, I had not.

Q. Lord

Q. Lord Thanet is a very strong, big man?

A. Yes, he is so.

Q. Then you had not seen Lord Thanet till after you had been with Mr. Fergusson, at this time upon the table?

A. No, I had not.

Q. And you had shoved against several others?

A. I probably might, in the endeavour to get forward.

Q. I would ask you, how you came to leave the line of the Solicitors' box, as you was advancing towards Mr. O'Connor to go up where Mr. Fergusson stood?

A. I did not go up to where Mr. Fergusson stood; the first time I placed myself, was by the right-hand side of the bar; Mr. Fergusson might have attacked me about the middle of the bar.

Q. After you saw Mr. O'Connor jump over the bar, and when you was apprehending that you might be disappointed in arresting him, you went forth with all the rapidity you could—Now, how came you to leave the course which directly led to him, to go up to the table where Mr. Fergusson stood?

A. There had been a great many gentlemen in the corner, and I got a little farther to the right.

Q. Towards the table where Mr. Fergusson was?

A. Yes.

Q. He was standing upon the table, and you upon the ground?

A. No; upon the bench. I might be upon the ground sometimes; for I was up and down several times.

Q. Mr. Fergusson was upon the table, flourishing a stick over you, in his wig and gown, and you forcibly wrenched it out of his hand?

A. Yes; and if he had not got away, he would have recollected me another time.

Q. Now you take upon you to say, that when this transaction took place, he returned to the table, and went to his seat?

A. He turned back, and went from me to the table.

Q. Did he go towards Mr. O'Connor?

A. No; he turned towards the Judges.

Q. Then it was not until after this transaction had passed, when Mr. Fergusson had flourished his stick in this manner, and had gone away towards the Judges, that you met with Lord Thanet?

A. Just so.

Q. What interval of time might there be between Mr. Fergusson's going away in the manner you describe, and your meeting with Lord Thanet?

A. A very few minutes—a minute or two.

Q. Where was it you met with Lord Thanet?

A. A very little distance from me.

Q. Was

Q. Was he in the Counsels' seat, or where?

A. I don't know what you call the Counsels' seat; he was upon the benches: as soon as I turned from Mr. Fergusson, I was immediately shoved down.

Q. Was the person you took to be Lord Thanet upon a bench by where the table stood?

A. I cannot say.

Q. Had he a stick?

A. He had no stick, that I recollect.

Q. Then Lord Thanet having no stick, what assault did he make upon you?

A. With his fist, in this way, shoved me down as I was going forward—he shoved me back.

Q. And then you struck him?

A. Yes: as soon as I recovered myself, I struck him two or three blows.

Q. With what?

A. The stick that I took from Mr. Fergusson.

Q. My Lord Thanet had no means of parrying that blow?

A. No; he did not attempt to strike me afterwards.

Q. Where was he at the time you struck him two or three times?

A. When I hit him the first time, he fell upon his side, this way.

Q. Did you strike him after that?

A. Yes.

Q. Mr. Fergusson was gone away?

A. Yes.

Q. Mr. Fergusson did nothing to endeavour to extricate Lord Thanet from you?

A. No.

Q. Did you strike any body else but Lord Thanet?

A. I do not know that I did; I might by accident.

Q. If you struck any body else besides Lord Thanet, it was by accident?

A. Yes.

Q. Did you see either Fugion, Adams, or Wagstaffe, who were there, strike any body?

A. No, I did not.

Mr. Garrow—Do you remember seeing Fugion strike any body?

A. No.

Q. You said you was not before acquainted with the person of Mr. Thompson?

A. No.

Q. Should you know him again now?

A. I should think that little gentleman is him.

Mr. Gibbs—This gentleman? (putting his finger on Mr. Thompson.)

A. No; the next gentleman.

Q. This

Q. This gentleman? (*putting his finger on Mr. Bonney.*)

A. Yes; I think that is him.

Sir Edward Knatchbull sworn, examined by Mr. Adam.

Q. Were you at the trial of O'Coigly, O'Connor, and others, at Maidstone?

A. I was.

Q. Were you present in Court at the time the riot took place?

A. I was.

Q. Will you state to my Lord and the Jury, whether you saw Rivett, the Bow-street officer, engaged with any person, and with whom?

A. Previous to the sentence being passed upon O'Coigly, I saw Rivett, the Bow-street officer, on the prisoner's right hand; he produced some paper, which I understood at the time to be a warrant from the Duke of Portland to secure the person of Mr. Arthur O'Connor; after that, there was some conversation passed between the Judge and Rivett, which I do not immediately recollect. *I saw Lord Thanet seat himself under the prisoners at the bar, immediately at the conclusion of the sentence being passed upon O'Coigly.* I saw Rivett, who appeared to me to be placed in a situation in order to prevent Mr. O'Connor's escape. I saw Mr. O'Connor put his right foot, I think it was, upon the bar, his left hand upon the railing, and his right hand either upon some person's shoulder that was sitting under, or else upon the rail, and jump into the crowd. I can only speak now as it struck me at the time; it appeared to me that *Lord Thanet rose from his seat as soon as Mr. O'Connor jumped into the crowd; he rose from his seat in order to prevent Mr. Rivett from securing the person of Mr. O'Connor.* There was some person—who it was, I cannot pretend to say; but it was some person rather with a bald head—a person whom I should not know again if I was to see him—

Q. Can you tell how he was dressed?

A. No, I cannot; but there was some person who took hold of Rivett, at least it had that appearance to me in the bustle; he took hold of Rivett, and pulled him, endeavouring to keep him back; Lord Thanet was between Rivett, and where Mr. O'Connor had leaped out of the pound. I know nothing further; that is all I saw of the business. I cannot pretend to say what passed afterwards.

Q. Did you see any fighting, or any blows struck?

A. It did appear to me, but I can by no means speak positively to it, that when a person, whoever it was, was endeavouring to keep Rivett back, Rivett, if I may make the gesture, for I do not know how to describe it, *Rivett, in this kind of way, struck Lord Thanet in the side, as it appeared to me;*

me; but I cannot say whether he struck Lord Thanet, or not, at that distance; nor did I see him make a blow at any person.

Q. Are you sure that Lord Thanet was standing in that part of the Court?

A. I am quite certain that he went there when sentence had passed.

Thomas Watson sworn, examined by Mr. Wood.

Q. You are the jailor of Maidstone, I believe?

A. I am.

Q. Was you in Court at the trial of these prisoners?

A. Yes, I was.

Q. Do you remember the Judges giving any directions not to discharge the prisoner?

A. Yes.

Q. When were these directions given?

A. Just before it ended.

Q. Do you mean before the sentence of death was pronounced?

A. Yes; I believe it was, to the best of my knowledge.

Q. Before the sentence was finished, did you say any thing to Mr. O'Connor?

A. I did: I said, "Mr. O'Connor, remember you are not to be discharged, though you may be acquitted." He said, "Why?" and I said, "Because I have no authority to discharge you, and therefore you must not go."

Q. Was any thing said after that to Mr. O'Connor by any body?

A. A person just below him, after sentence was passed, said to Mr. O'Connor, "You are acquitted; what do you stand there for? why don't you jump over?"

Q. You don't know who that person was, I suppose?

A. No; Mr. O'Connor said, "Mr. Watson says, I am not to go:" the gentleman below said, "Pshaw! you are acquitted; what do you stay there for? jump over." He instantly sprung, and I instantly caught hold of the skirt of his coat as he got over, and held him; I then cried out, "Stop him, stop him!" There were some of them shoving him behind to shove him through the wicket, and others shoving him back; but he was so secured, that they got him back into his place again.

Q. Did you see Rivett?

A. I did.

Q. Did you give any directions to Rivett?

A. I called to him, or his companion, and said, "I wish you would go out and get some constables and assistants;" for I suspected there would be something amiss by and by.

Thomas

Thomas Adams sworn, examined by Mr. Fielding.

Q. You were coachman to Mr. Justice Buller at the time of the trial?

A. I was.

Q. Tell my Lord, and the gentlemen of the Jury, what you observed in the Court after Mr. Justice Buller had passed sentence of death upon O'Coigly? First of all, where was your situation?

A. At the wicket-door that leads into the body of the Court, and that part of the Court that the spectators stand in.

Q. By the Jury-box?

A. Yes;

Q. Now, when sentence of death was passed, what did you observe going forward in Court?

A. Some person said, "Spring," but who, I know not; immediately Mr. O'Connor jumped over the bar into the body of the Court.

Q. Did you observe the person of the man from whom the voice came?

A. No, I did not; he came to the wicket-door, where I stood, and immediately caught him by the collar:

Q. Then he had made his escape so far as to get to the place where you were?

A. He had; I caught him by the collar of the coat; and says, "I'll be damned if I let you go;" and immediately the wicket-door was opened; I took the wicket-door in my left hand, and pulled it to, and bolted it; and the moment I had bolted it, some person knocked me down.

Q. Did you see that person afterwards, to know him?

A. My whole attention was to stop Mr. O'Connor.

Q. Then you don't know the person that knocked you down?

A. I do not; I immediately got up and seized Mr. O'Connor again, and said, "I'll be damned if I let you go; let the consequence be what it will."

Q. When you had recovered yourself, and caught him again, do you remember who were the persons immediately about Mr. O'Connor?

A. I saw several gentlemen between the officers and Mr. O'Connor.

Q. Did you know any of them by name, as it appeared afterwards?

A. I saw my Lord Thanet; his Lordship was as close to me as possible—rather behind me.

Q. How far was that situation, in which you saw Lord Thanet, from the immediate front of the bar from whence Mr. O'Connor had escaped?

A. He

A. He might be as far from the bar, not quite so far, as I am from you—rather nearer to the wicket, where I stood.

Q. Did you see Lord Thanet do any thing?

A. I saw Lord Thanet with a small stick in his hand in this position, directly behind me; and Rivett, the officer, came up and struck at him with a stick; Lord Thanet says, "What did you strike me for? I did not strike you." "You struck me first," says Rivett.

Q. Did you know any of the other persons that were by him?

A. I did not.

Q. Did you see any person there with a bald head?

A. I did not take any notice of a bald head; I saw a gentleman with a black collar and a pepper-and-salt coat on.

Q. What did that person do?

A. I did not see him do any thing; he was in the passage among the other persons that were endeavouring to obstruct the officers from taking Mr. O'Connor; I called out to some person to come forward to my assistance, for he made a spring, and the wicket-door was opened again; I made a spring and shut it again, and then Rivett and Fugion came up.

Q. How many persons do you think there were between you and the officers Rivett and Fugion who were coming up?

A. I cannot say how many there were; there might be seven, eight, or nine; or there might not be quite so many.

Q. Do you know the persons of either Mr. Thompson, Mr. O'Brien, or Mr. Gunter Browne?

A. I do not.

Q. Do you know the person of Lord Thanet?

A. Yes, I believe I do know him; I saw his Lordship give his evidence in Court.

Q. When Mr. O'Connor was last stopped by you, what became of him?

A. I delivered him up to two officers.

Q. How near to the bar from whence he had escaped did you come with him?

A. I came quite up to the end of the bar with him.

Q. At that time, what was the number of the people standing about?

A. They were directly opposing the officers from coming, when I was at the corner of the bar with him.

Q. Do you know the person of Mr. Fergusson?

A. I do not.

Q. Did you see any person in a bar wig and gown?

A. Yes.

Q. In what situation was he?

A. He was one of those who wanted to obstruct the officers from coming forward.

Q. What

Q. What did you observe him do?

A. I saw them stand all of a body together, so that the officers could not pass to take him.

Q. Do you remember any complaint being made to the Judge, by any person, of having their head broke?

A. Yes; a gentleman said, "What recompense am I to have? I have got a broken head;" but I do not know who it was.

Q. Was that the person that you spoke of with a black collar?

A. I cannot say.

Q. Had he a bald head?

A. I cannot say.

Henry William Brooke sworn, examined by Mr. Abbott.

Q. I believe you have some situation in the Secretary of State's Office?

A. Chief Clerk in the Alien department.

Q. Was you at Maidstone at the trials?

A. Yes.

Q. Do you know the person of Mr. Dennis O'Brien?

A. I do.

Q. Do you recollect seeing Mr. O'Brien in Court during the time the Jury retired to consider of their verdict?

A. I do.

Q. Where did you see him? where was he?

A. I saw him near the dock, on the side where Mr. O'Connor stood.

Q. Was he in conversation with any person that you observed?

A. He was in conversation with Mr. O'Connor.

Q. Do you recollect what happened immediately after the Jury had pronounced their verdict?

A. I recollect that Rivett, one of the Bow-street officers, attempted to get up on the side where the jailor sat.

Q. Did he declare the purpose of his attempting to go that way?

A. To the best of my recollection, he said, "he had a warrant from the Secretary of State to arrest Mr. O'Connor."

Q. Did you observe that any attempt was made to resist this person who was endeavouring to come forward?

A. I observed some persons endeavouring to pull him back.

Q. Do you recollect whether any direction was given to the jailor with respect to the prisoners, by either of the learned Judges?

A. Yes.

Lord Kenyon—It cannot be necessary to go into that.

Mr.

Mr. Erskine—There can be no doubt of any of these facts,

Mr. Abbott—Did Mr. O'Connor do any thing?

A. Mr. O'Connor placed, as far as I recollect, his left hand upon the side of the bar where he stood, and leaped over.

Q. Did you hear any voices crying out any thing?

A. At that time the tumult became general: I heard some cry out, "Stop, stop;" and others, "Run, run."

Q. Are you able to identify any person who was resisting Rivett?

A. I saw a person, to the best of my recollection, who was dressed in a grey coat and a black collar, and his head was bald on the top.

Q. What did you see that person doing?

A. He seemed to have hold of the officer's coat,

Q. Of Rivett's coat?

A. Yes.

Q. Did you afterwards learn who that person was?

A. I afterwards understood that person to be a Captain Browne.

Q. Did that person, after the tumult was over, prefer any complaint to the Court, that you recollect?

A. I cannot identify the person of the gentleman that endeavoured to make a complaint to the Court of ill usage; but there was some gentleman upon the table, who complained, whether generally, or to the Bench, I cannot say, "Am I to be ill-treated in this way?" or to that effect.

Q. Was that the person with a bald head and black collar?

A. I cannot say.

Q. Did you know Mr. Fergusson the counsel?

A. I have not the honour of Mr. Fergusson's acquaintance; but I had his person pointed out to me as being Mr. Fergusson.

Q. Did you see him do any thing?

A. He appeared to have SOMETHING in his hand; but whether it was a stick, or a sword that laid upon the table, or what, I cannot say—but he was brandishing it over the heads of the people.

Q. Was he in his professional dress at this time?

A. He was.

Cross-examined by Mr. Erskine.

Q. Where was Mr. Fergusson standing when you apprehend, rather than express, that you saw him brandishing something which you do not describe, but which you think was a stick or a sword?

A. He was standing near the side of the Court upon which Mr. O'Connor stood.

Q. Upon the ground, upon the bench, or upon the table?

A. He appeared to me, as far as I can charge my recollection,

to have been upon a bench; he appeared to be elevated from the ground.

Q. This was after the sentence had been pronounced, and after Mr. O'Connor had gone out of the dock?

A. It was about that time, as far as I can recollect.

Q. At the time of the confusion in Court, was it not?

A. It was at the time of the confusion.

John Stafford called again, examined by Mr. Law.

Q. I will not examine you to the preliminary circumstances which have been proved by several witnesses. Confine yourself now to the time that Mr. O'Connor was endeavouring to get over the bar. At that period of time, did you see any of the defendants, and particularly Mr. Fergusson or Lord Thanet, do, or endeavour to do, any thing?

A. At the instant that Mr. O'Connor leaped over the bar, I saw my Lord Thanet and Mr. Fergusson: I had been paying particular attention to Mr. Justice Buller in passing sentence; and the moment that he was done, I turned my eyes round to the bar, and saw Mr. O'Connor in the act of getting over; he had his left hand upon the bar, and his right hand extended: my Lord Thanet stood next to him, to the right of him; Mr. Fergusson, at that instant, was in front of him, with his back to me, facing Mr. O'Connor.

Mr. Erskine—Where did you sit at this time?

A. Supposing this to be the Court at Maidstone, I sat directly under the Jury.

Mr. Law—You sat so that you could observe the whole of the transaction?

A. Clearly; but the whole of the transaction was of that sudden nature, that I was rising part of the time; I rose, and seized one of the sabres which laid upon the table, and which was a part of Mr. O'Connor's baggage.

Q. Did you see Lord Thanet or Mr. Fergusson do any thing in aid of Mr. O'Connor in the act of escaping?

A. When Mr. O'Connor extended his arm, he either laid it upon Lord Thanet's shoulder, or Mr. Fergusson's arm; Lord Thanet being between me and Mr. Fergusson, I could not distinguish on which of them he put his hand.

Q. Did you see any obstruction given by them to any persons in passing from one part of the Court to the other?

A. I did not observe Lord Thanet make any obstruction; Mr. Fergusson had his back turned to that side of the Court from whence the officers were endeavouring to approach to the bar.

Q. With his back towards the great street of Maidstone?

A. Yes. At the instant I am now speaking of, I was upon the table.

Q. Did

Q. Did you see any thing in particular done by Mr. Fergusson?

A. Mr. Fergusson extended his arms in this manner, seemingly to me to keep the persons back who were forcing themselves forward. I saw no other act done by him.

Q. Then did Mr. Fergusson appear to you to be putting himself in a position to stop the way?

A. Certainly so.

Q. To stop the way for who?

A. I said before, to stop the way of the persons who were approaching that side of the Court where the officers were.

Q. Were any persons at that time attempting to come from the side of the Court where the officers were, to the side where Mr. O'Connor was?

A. Rivett and the Bow-street officers were. I at this time stood upon the table with a drawn sabre in my hand.

Q. Did you see any body, before that, have hold of the flap of Mr. O'Connor's coat?

A. Yes; before Mr. O'Connor got from the bar, I observed that Mr. Watson the jailor had got hold of the tail of his coat.

Q. Was it at the same period of time when you saw the officers rush forward, and Mr. Fergusson attempt to stop the way in the manner that you have described?

A. Yes; the whole transaction was of the shortest duration possible: Mr. Fergusson forced himself between Mr. O'Connor and Mr. Watson the jailor; Mr. Watson the jailor reached across; he sat on the other side from where Mr. O'Connor the prisoner sat; he reached across behind Binns, and seized the flap of O'Connor's coat, as he was getting over the table; the coat was extended for a small distance between O'Connor and the bar, and Mr. Fergusson forced himself in between the two, and Mr. Watson let go his hold.

Q. Do I understand you, that, by the action of Mr. Fergusson, the jailor was separated from his prisoner?

A. That I cannot say: the jailor might have let go his hold without the action of Mr. Fergusson; it appeared to me to be in consequence of the action of Mr. Fergusson.

Q. Do you know the person of Mr. O'Brien?

A. No, I do not; I saw a gentleman in Court who spoke to Mr. O'Connor two or three times; that gentleman I had previously seen in the witness's box, standing by Mr. Sheridan, Mr. Fox, and the other gentlemen that were there; and I saw him afterwards; but I do not know, of my own knowledge, who he was at all.

Q. You mentioned standing upon the table with this sabre in your hand—did you strike any body, or create any confusion?

A. I

A. I certainly struck no one; I menaced many that I saw, apparently to me, endeavouring to force Mr. O'Connor out; I brandished the sabre, and cried out very loudly, "Keep back," and made motions as if I would strike; but I did not strike any one.

Q. From the observations you were enabled to make, to what cause and to what efforts did you attribute the riot?

A. The riot must be attributed, most certainly, to Mr. O'Connor's attempt to escape, and the assistance that his friends gave him. I did not know of any warrant there was to apprehend him, till I heard Rivett call out in the manner I have described, before the sentence was passed.

Q. Did you observe any other circumstances of actual assistance given by the friends of Mr. O'Connor to his escape, besides those you have mentioned?

A. No; the transaction was so short, it was impossible to observe minutely.

Cross-examined by Mr. Erskine.

Q. This scene of confusion you represent as almost instantaneous, and to have continued but a very short time?

A. Yes.

Q. You was sitting, as clerk to Mr. Knapp, under the jury-box?

A. Yes.

Q. And your face, of course, towards the great street of Maidstone?

A. Yes.

Q. Now, after Mr. Justice Buller had pronounced sentence of death upon O'Coigly, did you see O'Connor jump out of the bar?

A. I did.

Q. Where do you mean to represent that you saw Mr. Fergusson at that time?

A. Mr. Fergusson did not attract my eye till I was upon the table; seeing the act of O'Connor, I immediately sprung up.

Q. You did not see Mr. Fergusson till the confusion had advanced?

A. It was just at the very instant; they all happened almost at the same time.

Q. Mr. Fergusson did not attract your attention till you had got upon the table in consequence of that instantaneous confusion having begun?

A. I got upon the table in consequence of seeing Mr. O'Connor leap over.

Q. Then, when your attention was first attracted to Mr. Fergusson, it was in the midst of the confusion?

A. Yes.

Q. Several persons appeared to be pressing forward, and there seemed to be a scuffle?

A. Yes.

Q. You observed Lord Thanet very distinctly?

A. I had never seen Lord Thanet before that day—I saw him give his evidence—I saw him afterwards, I think, sitting between Mr. Dallas and Mr. Fergusson; and I think I cannot err, when I say, I am sure it was Lord Thanet.

Q. Did you not see distinctly the person you took to be Lord Thanet?

A. Most distinctly.

Q. How far was he from you?

A. I am sure, not more than two yards; for the space between the table and the bar is very small; and it was between the table and the bar that I saw Lord Thanet.

Q. Where the Counsel sat?

A. Not in the seat where the Counsel sat.

Q. At this time you was upon the table, and saw Mr. Fergusson in the midst of the confusion; was he upon the table where you was, or in his place?

A. Neither upon the table, nor in his place.

Q. Where then?

A. Immediately behind where he had formerly sat; he had sat in the front of O'Connor, and he had got just behind the seat where he had sat before.

Q. You had a sword which you brandished for the purpose of keeping off any danger that might happen?

A. Yes.

Q. Do you mean to represent that Mr. Fergusson was at that time in the Solicitors' box?

A. I don't know whether I can call it the Solicitors' box or not; he sat at the extremity of the seat wherein the Solicitors sat—he was certainly directly before me at the end of the trial.

Q. At that time, was not Mr. Fergusson surrounded by a great number of people, who were pushing and shoving, and making a disturbance?

A. The persons behind him were certainly crowding upon him; but there was a small space before him that was vacant.

Q. Was there not a pressing upon him every way?

A. No, not from the table.

Q. Were there not persons in the place where the Solicitors' box was, pushing and crowding at the time Mr. Fergusson extended his arms?

A. Certainly; but I saw him only pressed on the side that I describe.

Q. Do you mean to swear that you saw Mr. Fergusson shift his place where he had been, and go nearer to Mr. O'Connor?

A. No, I did not see him shift it.

Mr.

Mr. Garrow—There was a low-backed seat for the counsel for the prisoners?

A. Yes.

Q. Behind that was a space and bench for the solicitors?

A. Yes.

Q. And if I understand you right, Mr. Fergusson appeared to you to be over that low back to the counsels' seat?

A. Yes, certainly so.

Q. Between the back of the counsels' seat and the bar?

A. Yes; I had not immediately before this observed where Mr. Fergusson was.

The Honourable Robert Clifford sworn, examined by Mr. Garrow.

Q. I shall not trouble the Court to hear from you over again the detail of the circumstances. Did you hear Lord Thanet examined as a witness upon the trial of Mr. O'Connor?

A. I did; it was a few minutes before five.

Q. Very soon after that, I believe, Mr. Dallas summed up on the part of the prisoner?

A. He began to sum up, I believe, about five.

Q. Did you observe where Lord Thanet sat while Mr. Dallas was speaking?

A. Mr. Dallas left his place, which was exactly opposite Mr. Justice Buller, and Lord Thanet came and sat in Mr. Dallas's place.

Q. Mr. Dallas had removed from the place where he had sat, to a more convenient place for addressing the jury?

A. Yes; to the left hand of the counsel for the Crown; Lord Thanet sat opposite Mr. Justice Buller; the attorneys' bench was between the prisoner and Lord Thanet.

Q. Did you, at any time after that, see Lord Thanet move from that place, Mr. Dallas's seat, to any other?

A. He went over the back of the seat, and went into the attorneys' place.

Q. To that seat which was immediately under the bar?

A. Exactly: I do not know whether it was the first or second seat; there are two seats, one seat is directly against the wood, and then there is the thickness of a man: I do not know which of them he was upon.

Q. When the jury returned, and had given their verdict, what observations did you make respecting either Lord Thanet, Mr. Fergusson, Mr. O'Brien, Mr. Thompson, or Mr. Browne?

A. When they had returned a verdict of Guilty against O'Coigly, I observed Mr. O'Connor put his left leg over the bar of the dock, I believe they call it, leaning upon his left hand; Lord Thanet rose up, and Mr. O'Connor's hand was within this distance (six or seven inches) of Lord Thanet's

left shoulder—it was below his head: I did not see it touch his shoulder, because Mr. Fergusson rose up, and was exactly between Lord Thanet and myself.

Mr. Erskine—Where did you sit?

A. I sat as Marshal under the jury-box.

Mr. Garrow—*Be so good as describe that rising of Mr. Fergusson's?*

A. *They ran off all together—they followed Mr. O'Connor, as it appeared to me—I bent myself as far as I could to see, when so many people came jumping from the witness-box, that I was almost overpowered.*

Q. The witness-box was opposite the jury-box?

A. Yes; and they all went off to the left hand, behind the cryer's box.

Lord Kenyon—Do you mean that they all ran off together?

A. *Mr. Fergusson, and the rest of them, went off towards the narrow street of Maidstone.*

Mr. Garrow—There you lost sight of them, on account of the number of persons that came to intercept your view?

A. I was sitting here, and they all went there.

Q. Did you see any thing more of the conduct of Lord Thanet?

A. I saw no more of them after that; I saw a gentleman, that was almost bald, come and complain that he had received a blow upon his head, and asked, “whether there was no redress for the blow he had received?”

Q. Did you learn afterwards that that was Mr. Gunter Browne?

A. I understood his name was Browne.

Q. Did you see him favouring the escape of O'Connor?

A. No.

Q. Did you see Mr. O'Brien do any thing?

A. I saw a person in a grey coat hanging his left arm over the jury-box for some time, afterwards came down, and was seated on the right of Mr. O'Connor, upon the bar that was there. Just before Mr. O'Connor made his escape, that person disappeared from that place, and I saw no more of him.

Thomas Wagstaffe sworn, examined by Mr. Adam.

Q. You are a King's messenger?

A. Yes.

Q. You went to Maidstone, in May last, with a warrant to apprehend Mr. O'Connor?

A. Yes.

Q. Did you go into the Court with Fugion and Rivett for that purpose?

A. No; Fugion and Rivett were in the Court before I went in, and I went in to them.

Q. Do

Q. Do you remember any gentleman coming and asking you any questions about your warrant?

A. Yes; a gentleman came and asked, "If I had a warrant, or any thing against Mr. O'Connor?" I told him, "No."

Q. Did any other gentleman come to you?

A. No.

Q. Do you know who that gentleman was?

A. No: I understood afterwards it was Mr. O'Brien.

Q. Did any thing further pass between you and Mr. O'Brien at that time?

A. He offered to bet some money with Fugion and Rivett.

Q. Did any thing more pass?

A. No.

Q. Had you your escutcheon as messenger on?

A. No.

William Cutbush sworn, examined by Mr. Garrow.

Q. I believe you are a clock-maker at Maidstone?

A. Yes.

Q. Was you in Court at Maidstone when sentence of death was passed upon a prisoner of the name of O'Coigly?

A. Yes, I was.

Q. Upon that occasion, did you see Mr. O'Connor do any thing?

A. Yes; I saw him get over the bar.

Q. At that time did you see Lord Thanet? and if you did, what did you see him do?

A. After that, I saw a man with a sword in his hand beating over a gentleman's head.

Q. The Court have been sitting many hours, and have heard the general detail of the transaction; be so good as answer my questions—Did you see Lord Thanet?

A. I did.

Q. Did you see his Lordship do any thing, and what?

A. I saw Rivett strike Lord Thanet over the back—I did not know it was Rivett at that time—I knew Lord Thanet very well.

Q. Where was Lord Thanet at the time that Rivett struck him?

A. Two or three yards from Mr. O'Connor, or thereaway.

Q. Was Lord Thanet nearer to the great street of Maidstone, than he was to Mr. O'Connor, or to the narrow street?

A. They were all on the left side.

Q. You was on the side on which Mr. O'Connor was endeavouring to get out?

A. Yes.

Q. What was the first thing you saw?

A. I

A. I saw nothing till I saw the sword hit upon Lord Thanet's back.

Q. That was not Rivett?

A. Yes, it was he hit Lord Thanet upon the back with a sword—I did not know it was Rivett till afterwards.

Q. Were any of the lights put out?

A. One.

Q. Did you hear any expression about putting out the lights?

A. Yes; I heard some person say, "Put out the lights."

——— *Omrod sworn, examined by Mr. Adam.*

Q. I have but one question to ask of you—Did you see any body, at the time of the pronouncing of the verdict at Maidstone, in the case of O'Coigly and O'Connor, lay hold of Rivett, or any of the officers?

A. Yes; Rivett, Fugion, Wagstaffe, and I, were standing together; they wanted to cross the Court where Mr. O'Connor was.

Q. What was done to Rivett?

A. Two gentlemen in black got up and opposed him very much; I said to one of them, "You must not obstruct this man; he is an officer of justice."

Robert Parker sworn, examined by Mr. Garrow.

Q. Was you in Court at Maidstone when the Jury returned into Court with their verdict, in the case of O'Connor and others?

A. Yes.

Q. Were you near the under-sheriff?

A. I was very near—behind him.

Q. Nearest the great street of Maidstone, and far from O'Connor.

A. Yes.

Q. Did you see any thing happen upon that verdict being brought in?

A. Upon the verdict being brought in, he put his leg over the bar, feeling himself discharged, as he afterwards explained; a Bow-street officer then stepped up, and said, "There was a warrant to detain him;" Mr. O'Connor then put his leg back again, and said, "He thought he was discharged;" and one of the Judges said, "He was not to be discharged," or something of that sort; and he was quiet till sentence was over.

Q. Did you see Lord Thanet?

A. Yes; I saw him on a seat at the front of the bar—I am perfectly sure I saw Lord Thanet.

Q. After sentence had passed, did you see the Bow-street officers make any attempt to pass the bar where Mr. O'Connor stood?

A. Mr.

A. Mr. O'Connor jumped over the bar, and then the Bow-street officers both advanced in order to stop Mr. O'Connor; the jailor called out, "My Lord, am I to let him go?" or something to that effect, and there was a contention; several persons were assisting Mr. O'Connor to get out at the opposite door, and the Bow-street officers were attempting to stop him.

Q. Did you at that time see Lord Thanet?

A. I did.

Q. In what situation? and what was he doing?

A. Lord Thanet evidently appeared to me to be obstructing the officers in their attempt to stop Mr. O'Connor.

Q. Did you see any other person engaged in the same attempt?

A. Not any one whose person I then knew.

Q. Did you observe any person whose dress was remarkable?

A. I saw a gentleman in a bar gown and wig endeavouring to assist the escape of O'Connor; but at that time I did not know the person of the gentleman.

Q. Do you since know who that gentleman was?

A. I only know by report.

Q. Did you see any other person in a gown and wig acting as you have described?

A. No, I did not.

Q. Had you been in Court during any considerable portion of the trial?

A. No, very little; I had been in, for five minutes at a time, perhaps three times during the trial.

Q. So that you had not an opportunity of observing that gentleman in the course of his professional duty?

A. No.

Cross-examined by Mr. Gibbs.

Q. You say Lord Thanet appeared to you to be obstructing the officers; did you see him do any thing?

A. I saw him resisting with his hands.

Q. Pray, when was this?—before or after the sentence?

A. It began immediately after the sentence; it began upon Mr. O'Connor getting over the bar.

Q. What did he do with his hands?

A. The Bow-street officers pushed forward; and against one of them it was that he was making resistance.

Q. Pray, which of them?

A. I cannot tell—I do not know which—I did not know either of them.

Q. Did you see the warrant?

A. Yes; I saw it handed over to be read.

Q. Can you tell whether it was against either of those two men, or against the messenger, that he was making that resistance?

A. I cannot.

Q. But you saw him put his hand against one man that was coming forward?

A. Yes, certainly.

Q. You said that you saw a gentleman in a bar gown that appeared to assist O'Connor?

A. Yes.

Q. What did you see him do?

A. I recollect that gentleman was ranged with the Counsel for the prisoners; and then he turned round with his face to the bar, and was in that manner contending to resist their advancing towards the prisoner.

Q. He was standing upon the ground, and reaching over?

A. Yes.

Q. Standing, as I may be standing now, supposing this to be the bar?

A. Yes: supposing you was turned round, it would be exactly so—he turned round towards the bar.

End of the Evidence for the Crown.

THE HONOURABLE THOMAS ERSKINE.

GENTLEMEN OF THE JURY,

IT now becomes my duty to address you—but for three of the Defendants only: because, though nothing could possibly have separated their cases in argument, yet it was thought prudent not to embarrass the mind of any one advocate with so many facts and circumstances as the defence of all of them might eventually have involved. My Learned Friends who sit behind me, were, therefore, to have defended the other two Gentlemen; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought advisable by the Court that they should now be acquitted, lest their testimony should become material hereafter for those who remain under trial.

Several observations were made by the Attorney-General, in his short and dispassionate address to you, well worthy of your attention. He told you, that he could not conceive a greater offence against the justice of any country, nor indeed against the very character of Justice itself, than an attempt to confound and overbear its Judges and Ministers in the administration of
Law.

Law. I admit it freely. The undisturbed and unruffled course of Justice is the universal source of human security. Statesmen have, in all ages, distracted Governments by their ambition : parties will always create animosities, and sometimes confusion, by their discordant interests ; tumults will occasionally arise out of the best of human passions, in the best-ordered States : but where an enlightened and faithful administration of justice exists in any country, that country may be said to be secure.

It has pleased God to give us a long reign of that security in England. Indeed, if I were to be asked what it is which peculiarly distinguishes this nation from the other nations of the world, I should say that it is in her Courts she sits above them ; that it is to her judicial system she owes the stability of all her other institutions : her inhabitants have for ages lived contented under her laws, because they have lived in safety.

Gentlemen, the Attorney-General had certainly no occasion to enter into any explanation of his own conduct in the course of this prosecution : it was never my purpose to impeach it. The question is not, whether he is justified in having arraigned the Defendants ? but, whether, upon the whole evidence, they are guilty, or not guilty ? I say, upon the *whole* evidence ; because, to secure myself an impartial hearing, I think it my duty to tell you, in this early part of my address to you, that I mean to call witnesses in their defence. You have heard attentively the accusing testimony : AUDI ALTERAM PARTEM. It is not two days ago that, in a similar stage of an important trial, the Noble Judge upon the Bench took occasion to remark to a Jury, that this was so sacred a maxim of Justice, that we were frequently reminded of it by seeing it inscribed upon the very walls of our Courts.

It has been also truly observed to you (as the observation applies to the first of the Defendants upon the Record, my noble friend and client, Sackville, Earl of Thanet), that the charge against him is of a most deep and serious complexion. I think so too. He is a man of illustrious rank—a hereditary Judge and Legislator of the kingdom ; and a judgment, therefore, against *him*, is of far greater consequence than to a mere private man. It is a great impeachment of such a person, that he infringes the Constitution of his country, of which he is a dignified guardian ; that he disturbs the execution of those laws of which he is a high magistrate ; and that, forgetting the duty annexed to his exalted station, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the sanctuary of Justice with misrule and violence.—Mr. Fergusson, though inferior in rank to the Noble Earl, stands eventually in a situation, perhaps, of still greater delicacy, and is involved in deeper consequences. The son of a late eminent Lawyer in the other part of the Island, who
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filled also a high situation in its magistracy ;—himself bred to the English bar ; not as a fashionable branch of education, or as an useful introduction into life ; but engaged in it learnedly, honourably, and successfully, as a profession, and as a profession by which he must live :—a young man, so circumstanced, has surely a most serious claim to your attention, and even to the most indulgent consideration. As to the other Gentlemen, I need hardly speak of them : because, though their names have of course been reiterated in the questions put to the witnesses, nothing approaching to criminal conduct has been established against them. We are here, therefore, upon a mere question of fact. You cannot but have observed, that the Attorney-General and myself, instead of maintaining opposite doctrines, perfectly agree upon the principles which ought to govern your decision. The single object of inquiry is, the truth of this Record. Is the charge proved to your satisfaction ? or, rather, *will* it be so proved when the *whole* cause has been heard ? In adverting to what the charge is, I need not have recourse to the abstract I had made of the Information. The substance and common sense of it is this :—that Mr. Arthur O'Connor had been brought, by legal process, into the custody of the Sheriff of Kent ; that a Special Commission had assembled at Maidstone, to try *him* and others for High Treason ; that, upon the opening of the Commission, he had again been committed by the Court to the same custody ; that he was afterwards again brought up to the bar, and found not guilty ; and that, after he was so acquitted, but before he was in *strict form* discharged by the order of the Court, the Defendants conspired together, and attempted to rescue him. This is the essence of the charge :—the disturbance of the Court, and the assaults stated in the different counts of the Information, are only the overt acts charged to have been done, in pursuance of this purpose, to rescue the prisoner. The *criminal purpose* to rescue Mr. O'Connor, is the fact, therefore, of which you must be convinced, to justify the verdict which the Crown has called upon you to pronounce.

Before I proceed to address myself to you upon the evidence, I will do that which must make it manifest that it is not my wish to confound your understandings in the investigation of facts ; for I will begin by relieving your attentions from the consideration of all circumstances that are neither disputed, nor fairly disputable, either as they are the result of what you have heard already, or as I think they must remain when the whole case is before you. I admit, then, that Mr. O'Connor, when he heard the verdict of the Jury in his favour, was disposed to leave the Court. The presumption, indeed, as it arises out of universal practice, as well as out of the law that warrants it, is, that he, as well as others, thought that the verdict of Not

Guilty

Guilty entitled him to do so. Neither can it be disputed that a warrant did in fact exist, and that its existence was known; since it appears that the officers stated in open Court that they had one: And it is not material for me to dispute, nor is it, perhaps, disputable, that Mr. O'Connor knew of their intention to arrest him; and, if he did know it, human nature is stronger than all the evidence in the world to convince every man of his disposition at least to escape from it: and I admit further, that a most honourable person, who gave his evidence with a candour which reflects high honour on his character, has added a circumstance which, though it could not be strictly received as proof, may be true, for any thing that touches the merits of the case, *viz.* that there had been a communication to the Court that there were disaffected persons disposed to rescue the prisoner.

Having admitted these facts, I, in my turn, have a right to bring to your recollection, that it is an indisputable fact, resting upon the whole of the Crown's evidence, that the officers, strongly impressed with this idea, rushed suddenly and impetuously forward, on Mr. O'Connor's stepping over the bar when the verdict of Not Guilty was delivered: and indeed Rivett, upon his cross-examination, distinctly admitted, that owing to the apprehension of a rescue, he rushed into Court with more precipitation than, under other circumstances, he could have justified; and that a great bustle and confusion existed before he approached any of the Defendants, or even saw their persons. This admitted origin of the disturbance removes all difficulties from the consideration of the cause; and Mr. Justice Heath declared, that there was a scene of confusion and violence in Court, such as he had never seen, nor could possibly have expected to see, in a Court of Justice; and the single question, therefore, is, what share the Defendants had in it? Did the disturbance arise from any original acts of their's? or were they, on the contrary, first pressed upon by the officers and their assistants, who, though they might be engaged in what they mistakenly supposed to be their duty, from an expectation of resistance, necessarily created confusion by their forcible entry into a crowded Court? Were the Defendants engaged in any conspiracy or combination to deliver Mr. O'Connor? That is the great, or rather the only question; because, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at present, are perfectly consistent with the conduct of gentlemen suddenly and rudely trampled upon in a tumult, though without, perhaps, being the particular objects of violence by those who created it.

The natural course of considering which of these propositions ought to be adopted by reasonable men, is to set out with tracing a motive. There can be no offence, without some cor-
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sponding inducement to commit it. It is not alledged that these Gentlemen ignorantly or wantonly insulted the Court—an indiscretion which can only happen amongst the lowest orders of the people: the charge upon them is a *deliberate* and *pre-existing* combination to deliver Mr. O'Connor, by confusion and force, from a warrant which they knew to be impending; and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the result of such a conspiracy.

Now, I have always understood it to be the great office of a Court of Justice, when evidence is to be opposed to evidence, to consider the probabilities of the transaction; indeed, a judicial decision is nothing else but the bringing up facts to the standard of reason and experience. I have already described the situations of the only two Defendants whose cases you can have occasion to consider;—the one, as a high Peer and Magistrate of the Kingdom, with the natural consciousness of the duties inseparable from exalted stations; the other, standing in a manner for his very existence upon the dignity and decency of his deportment in the Courts, which habit, as well as principle, had taught him to reverence and respect. Yet the charge upon such persons is, that open undisguised acts of violence were committed by them, in a place which the Attorney-General has, with great propriety, assimilated to the place where we now sit—because nothing more forcibly assists the judgment than by bringing the scene under the immediate notice of the senses; and I am, besides, speaking to Gentlemen of the county of Kent, who must themselves know the place without the aid of this comparison, though you cannot know it better than I do. I have spent many laborious hours of my life in the Court at Maidstone; though the labour was always rendered delightful by the reflection that I never had to plead in vain, before Gentlemen of your description, the cause of innocence or truth. The Attorney-General, then, has assimilated the Court of Maidstone to this Court—He says, that the prisoner sat where my Learned Friends now sit behind me; that the bench of the Solicitors, where the confusion began, cannot be better described than by the place occupied by the King's Counsel now sitting around me; the seat of the Counsel may be considered to be placed where these Gentlemen are now sitting before me; and the vacancy in the middle, between the bench and me at this moment, must be supplied by the table of which we have heard so much; whilst the Judges *there* must be considered to be placed as they are *here*, elevated in situation as in rank, and commanding the most distinct and immediate view of every part of the Court. Under these circumstances, you are asked to believe that Lord Thanet and Mr. Fergusson—the one possessed of a large hereditary fortune in Kent, and who could not but know that

that his person was as well known to every man in Maidstone as St. Paul's Church to the inhabitants of Ludgate-Hill—the other standing upon a table within six yards of the Judges, in the robes of his profession, close by a large chandelier, described at that time by all the witnesses to have been fully lighted;—you are desired, I say, to believe, that these two persons, *without any motive upon earth brought home to them by any part of the evidence*, engaged publicly in a scene of audacious riot and violence, in the public face of the most dignified Court; in the presence of all its numerous Officers; of an acute and intelligent Bar; of the Sheriff and all his train; of a Jury composed of the principal Gentlemen of the county; and of all that concourse of attendants upon an important State prosecution which either duty or curiosity had collected. I maintain that the history of the world does not furnish an example of such a total departure from every principle of human action, and from all common sense and prudence, in the commission of a crime. The interest of the parties to commit it appears to be nothing—the project utterly impracticable—detection absolutely certain—the reproach, to men of character, severe and inevitable—the legal punishment, not less so; and all those consequences notorious to men of the meanest and most uncultivated understandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating these absurdities; but they are too important to be thus run over; they must be viewed separately, to have their proper effect.

First, then, let us search for a motive strong enough to impel honourable men to encounter such desperate difficulties, in the pursuit of a dishonourable, useless, and impracticable purpose. Have you any evidence, have you the suggestion, have you even the insinuation of Counsel, that the Defendants ought to be classed amongst those evil-disposed persons (if any such existed) whom Mr. Justice Heath took notice of, but upon report only, as attendant on the trial? The Noble Earl came down, under the process of a subpoena, to give evidence for the prisoner; not even of any fact connected with his conduct, but merely to state what he knew of Mr. O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourse with the world. But why should I seek by observation to remove the imputation of a motive corresponding with the misconduct which is imputed, when it is but common justice to the Attorney-General to admit that he did not even attempt to insinuate any thing of the sort? Yet my Noble Friend remains as a criminal before you, charged with the violation of that which is the most sacred in civil society, branded with the resistance of authorities the most dignified and important, in order
that

that a person supposed to be an object of high suspicion by the Government of the Country, might be left at liberty to perpetrate the treasons which the Duke of Portland's warrant had for its object to defeat—treasons which, if successfully perpetrated, were, in their most direct and obvious consequences, to strip the Noble Earl of all the splendid inheritance of rank and property descended to him from his ancestors through so many generations. Mr. Fergusson will forgive me if I say, that the principal property which he can die possessed of, must be the fruits of a profession which the same treasons were pointed to destroy; yet he, too, must be believed, *without a shadow of evidence, or even the suggestion of his accusers*, to have engaged in the desperate effort of affording shelter and opportunity for treasons which were to dissolve the Courts in which he practises, to destroy that system of Law which he has been bred to understand, and to set up, instead of it, a new order of things, by which he must descend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undisciplined competitors.

But, it seems, they were not indifferent to the deliverance of Mr. O'Connor; for, upon his acquittal, they hastened to the bar, and congratulated him on the verdict. They certainly did so, in common with many others; and although the impulse of personal kindness which directed them was honourable, it may be set down, not so much to the individuals, as to the characteristic benevolence of Englishmen. The characteristics of nations depend more upon their histories and their governments, than upon the temperaments of men arising from natural causes. The English Constitution was always, in *theory*, a Constitution of Freedom; but it only became so in practice by the numerous and finally successful struggles of our free and virtuous ancestors against oppressive abuses of authority. Many eminent persons to whom this Country is indebted for her Liberties, having stood upon their trials, and having obtained deliverances from the Tribunals of Justice, has gradually produced a general sympathy in the minds of Englishmen, when men are standing for life or for death before their country. This is an almost universal, and peculiarly characteristic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice; but pervades all the classes of society. It is compounded of a principle of humanity, of a spirit of national pride and dignity in the freedom of our institutions, and of a sense of security derived from them. No reasoning, therefore, can be more false, than that, when men are accused, and even upon pregnant evidence, of conspiracies against the Government, that they who seem to feel an interest in their deliverance are alienated in their affections to the State. Englishmen of all descriptions receive
their

their sense of innocence from their Country's verdict ; and they feel a sort of satisfaction which, I verily believe, exists in no other country. Irreligion and false liberty have been seen to delight in blood, to rejoice in revengeful sacrifices, to think it music to hear the agonizing groans of expiring sufferers, and a spectacle of triumph and pleasure to gaze upon their mutilated bodies ; but the sense of liberty in a country long humanized by the influence of a free government, shrinks back even from the consequences of the justest prosecutions, looks with an eye of tenderness upon the accused even before the conscience is convinced of innocence, and feels an invincible impulse of pleasure in the legal deliverance from guilt. Long, long, may this remain the characteristic feature of our Country !—When Mr. O'Connor, therefore, was pronounced not guilty, was it any proof of a conspiracy to rescue him from other charges, that he was congratulated on his deliverance, which he was not only entitled to by the verdict of the Jury, but which the evidence on the trial, and the Judges' remarks on it, had previously and distinctly anticipated ? The question, therefore, again recurs—Were the Defendants the active authors of the rescue, for the purpose charged in the Indictment ? The MOTIVE is gone already—not only as wholly unascrivable from the total absence of evidence, but because my Learned Friend who laid the case before you was too much a man of honour (as I have already done him the justice to acknowledge) to ascribe, or even to insinuate, a motive which he knew did not exist, and which he had neither evidence nor reasonable presumption to support.

If, however, a criminal act, tho' without the proof, or even the imputation of a referable principle of action, may still be believed by a Jury dispensing the mild and rational justice of this country ; the next consideration, in weighing the probabilities, is, how this purpose, supposing it still to exist, without any corresponding interest, was possibly to be accomplished ?—for men cannot be presumed to engage in the most perilous enterprises, not only without inducement, but without even a shadow of hope or prospect that their object is practicable. The situation of the Court is not only present to your own recollections from your perfect acquaintance with it, but is brought before your eyes by its just comparison with this. Mr. O'Connor stood at the bar where my Learned Friends now sit, surrounded by hundreds of persons not attempted to be implicated in any design to favour his escape : on the right, and on the left, and behind, were the public streets of Maidstone, from whence no passage without observation was to be expected ; and before they could even be approached, an outlet must first have been made through groves of javelins in the hands of those numerous officers which the exemplary attention of the Sheriffs of Kent

Kent have always provided for the security and dignity of the Court. It was, therefore, not merely improbable, but *naturally impossible*, to deliver, or even hope to deliver, a prisoner from the public bar of such a Court, in the view of all its Judges, its Counsel and attendants, without the support of great force and numbers, and without, likewise, a previous concert and combination to direct them with effect.—The next consideration, therefore, which directly follows these immutable principles of judgment, is the fact as it applies to them—Was there either FORCE exerted, or NUMBERS collected, or MEASURES CONCERTED? The Defendants cannot be made responsible for any act of violence which might be committed by any disorderly persons in the street. It is nothing to them, that Mr. Justice Buller's servant was knocked down in one of the avenues of the Court, whilst they were admitted to have been in its centre. What act of disorder or violence do you find committed by Lord Thanet, by Mr. Fergusson, by Mr. O'Bryen—or by Mr. Gunter Browne, who has been made a defendant only because, without any offence on his part, he appears to have had his head broken! for this gentleman is literally not identified by any part of the proof as having been even in Court at all, except as he was seen complaining to the Judges of an assault committed on himself. Lord Thanet is a man of high spirit, and of a strong body: it must have been a warm interest, as I have repeatedly observed to you, that could have embarked him at all in such a business; and, when embarked in it, he must reasonably be supposed to have engaged with activity in the accomplishment of an object for which he risked so much: yet it has appeared already, by the testimony of one of the most respectable and the most correct of all the witnesses for the Crown, and it will be made manifest hereafter beyond all doubt or question, that, at the very moment (and it was but a moment) when the evidence has the remotest application to any of the Defendants, he lay back inactively, holding his stick with both hands across his body, to defend himself from the assaults of only one man, not stronger than himself, and whose blows he neither attempted to return, nor invited the aid of others to repel: so far from it, that Mr. Fergusson, who is supposed to have put his character and situation to so much hazard, though he stood close by, is not even charged with having exerted his strength on the occasion, but to have contented himself with flourishing a small stick in his hand without striking or aiming at any body—a circumstance neither true, nor possibly consistent with the truth of the designs which are imputed to him; and no act of violence, or even gesture to incite it, is imputed to any other person near this supposed focus of confusion, at the only time when Lord Thanet and Mr. Fergusson are affected even by the solitary evidence of Rivett. So much for the force exerted

in the pursuit of a purpose which no force proceeding from a few persons could have accomplished : and as to any previous concert or combination amongst numbers which can possibly involve them, it is rendered absolutely incredible by the whole body of the evidence ; for the Attorney-General has proved that there were attendant on Court a great number of gentlemen known to profess the same principles and opinions with the Defendants, and most intimately acquainted with Lord Thanet in private life—gentlemen who, I have no doubt, are here at this moment assembled by the just anxiety of friendship and affection ; yet it is not imputed to any of those numbers I allude to, though all present in Court, and within reach of whatever was transacted in it, that they took any part, directly or indirectly, by force, by speech, or by seeming encouragement, in the scene of disorder which took place. If Lord Thanet, then, is a conspirator, with whom did he conspire ? since, with the exception of the four other Defendants, three of whom must be acquitted for want of evidence, accusation itself does not even attempt to implicate one man of his numerous friends and acquaintance, who must naturally be supposed to have been impressed with similar feelings, nor indeed any one man, high or low, whom he can be proved to have ever spoken to, or seen, in the whole course of his existence ; and if obscure and unknown persons are to be taken to have been instruments in this confusion, there must have been some evidence of direction or encouragement to others proceeding from the Defendants, which is not attempted to be sworn by any of the witnesses. This most important part of the case shall not, however, be left upon the failure of evidence, or even upon the absence of accusation : for I will call many of these gentlemen, who will tell you that they were wholly ignorant of any design to rescue the prisoner—that they saw no confusion or riot, except that which the precipitate entry of the officers occasioned ; and who, by tracing the Defendants in their eyes through the whole of the period in question, will be able positively to contradict the most material parts of the evidence which personally affects them.

Gentlemen, the next question upon the score of probability is this—Supposing that, contrary to every thing either proved or asserted, the Defendants *had* felt an interest in the escape of Mr. O'Connor, and *had* conceived it to be *practicable*, could they possibly have hoped to escape detection—more especially Lord Thanet and Mr. Fergusson, whose persons were so notorious—the one, from his high rank and residence in the county whose principal inhabitants surrounded him ; and the other, from being in his professional dress, in the place assigned to him as Counsel on the trial, and, in the very midst of his companions, engaged in the business of the Court ? These gentlemen,

gentlemen, therefore, upon the Attorney-General's own admission, who has justly assimilated the Court at Maidstone to the one we are now assembled in, could no more have hoped to escape immediate detection and punishment for the riot they are supposed to have engaged in, than I could hope to escape from them, if, taking a strong interest, as I must be supposed to do, in the acquittal of my clients, and thinking there was no safety for them but by making such a confusion in Court as to prevent your hearing the evidence, or the Judges' observations on it, I should, when I had finished my address to you, and the Judge was beginning to sum up to you, publicly begin or join in a scene of noise and uproar, under the eyes of the Judges, as they now look at me—of the Officers, now sitting before me—of you, the Jury, to whom I am speaking—of my numerous friends at the Bar, whose honour is connected with the dignity of the Court—and of the whole croud of spectators, hundreds of whom I am known to personally, and all of whom are acquainted with my person.

Gentlemen, I can observe, from the absurdity and impossibility of the case I am putting, that I seem to be trifling with the subject: but that sensation, which I have no doubt is general, and which I cannot help even feeling myself, displays the irresistible force of the actual case before you; because I defy the wit, or wisdom, or imagination, of man, to attempt even a shadow of a distinction between the case I have put to you and that of Mr. Fergusson:—for, why should *he* be supposed, any more than *myself*, who am the object of comparison, to have embarked in this impracticable project of disgrace, dishonour, and injustice: in the dress of Counsel, as much as I am; on the trial which engaged the Court; and in a place, the exact similarity of which to the room that holds us is no assertion of mine, but a fact so unalterably established by the whole evidence as to be employed by both sides as an assistant to the mind in judging of the accuracy and consistency of the proof?

The next recourse to probability, if your judgments, as in all other cases, are to be governed by reason and experience, is, if possible, still more unanswerable and decisive.

Supposing the Defendants, without interest or motive, and without the possibility of success, and without even a chance of escaping from detection and punishment, to have nevertheless publicly insulted and disturbed the Court by acts of disorder and violence, WHO MUST HAVE BEEN THE WITNESSES TO SUCH A SCENE? Who, for instance, must have been the witnesses, if Mr. Fergusson, as has been asserted, had stood upon the table of the Court—the table round which the Counsel are ranged, directly under the eyes of the Judges and the Jury; and had flourished a stick round his head, to favour the escape
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of the prisoner, by preventing the officers from approaching him;—*who, I say again, must have been the witnesses to such a phenomenon?*—who, amongst the Judges, or Counsel, or officers, or spectators, but must have seen it?—who, that had seen it, could possibly have forgotten it?—and who, that remembered it, could have hung back from the proof of such inexcusable misconduct? Yet the proof of this fact, to which the whole Court must have been, as it were, but one eye, and an eye of indignation, is not supported by any one person, either upon the Bench, or at the Bar, or amongst the numerous officers of the Court. On the contrary, we shall see, by and by, the difference between the testimony of a reverend Judge of England and that of a Bow-street officer, when I come to advert to the evidence of Mr. Justice Heath, which is directly and positively inconsistent with Rivett's, on whose single and unsupported testimony this extravagant and incredible part of the case is alone supported.

But, it seems, they have given judgment against themselves, by their demeanour and expressions upon the occasion. Lord Thanet, it seems, said to Mr. Justice Lawrence, as Mr. Abbot expressed it, who did not hear what the Learned Judge had said, to which Lord Thanet's words were an answer, "that it was fair he should have a run for it;"—words which cannot be tortured into any other meaning, more especially when addressed to one of the Judges of the Court, than that, speaking in extenuation of Mr. O'Connor's conduct, who had visibly made an effort to escape, he thought it fair that a person so circumstanced should have a run for it, if he could; a sentiment which, by the by, no man in his senses would have uttered, more especially in such a quarter, if he had felt himself at all implicated in a criminal endeavour to assist him: And if Lord Thanet did not speak at this moment with all that complacency which in general so much distinguishes him, nor offer, as Mr. Sheridan did, his assistance to the Judges, it is not at all to be wondered at; for it must be recollected that he had just suffered in his person, not as you have it upon the evidence at present, but had been most roughly and severely assaulted. Mr. Justice Buller is proved to have said, that Mr. Sheridan conducted himself in a manner greatly to his satisfaction: But the very contrast which this evidence is introduced to furnish, instead of operating against Lord Thanet, is an additional argument in his favour. Lord Thanet and Mr. Sheridan are as one man in every thing which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr. Sheridan should be assisting the Judge, whilst Lord Thanet, who had no connection with Mr. O'Connor which did not equally belong to the other, should be behaving like a madman, unsupported by any of his friends or acquaintances, who

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were attending as witnesses upon the trial? But the time of this conversation, if I had before adverted to it, would have rendered all these observations wholly unnecessary; for it was *after* the riot (as it indeed must have been), that Mr. Justice Lawrence conversed with Lord Thanet, saying to him, amongst other things, "that he hoped Mr. O'Connor's friends would advise him to submit to his situation." Now I may safely assert, that, high as Lord Thanet's rank is, that Learned Judge would not have spoken to him as a person from whom he solicited and expected assistance, if he had himself observed him, or if he had known him to have been observed by others, disturbing the order of the Court. On the contrary, if there had been a reasonable ground for impeaching Lord Thanet's conduct, the Learned Judge would have executed the law upon him: he would have attached him for his contempt; and surely no person in Court had a better opportunity of observing every thing that passed in it. Mr. Justice Lawrence was one of the youngest of the Learned Judges who presided at the trial, with stronger health than belonged to all of them, which enabled him to keep up his attention, and to observe with acuteness: He was, besides, deeply interested in whatever concerned the honour of the Court; and the elevation of the bench on which he sat gave him a full view of every person within it. Indeed, Lord Thanet, at the time this misdemeanour is imputed to him, was directly before him, and under him, and not farther from him than Lord Kenyon at this moment is from me. I have, therefore, a right to say, that not only nothing is to be presumed against Lord Thanet from what he said, but that, on the contrary, a strong presumption arises in his favour when we hear the evidence from any other mouth than that of the Learned Judge himself; since, if *he to whom the discourse was addressed*, and who was the best judge of the fair construction to be put upon it, had considered it in the light it has been represented and relied on, he might have been called as a witness. Mr. Justice Heath and Mr. Serjeant Shepherd, the Judges in the same Commission, were examined to matters infinitely less material.

Gentlemen, let us now pause a little, to consider the effect which I feel myself entitled to derive from these observations. I consider myself to have advanced no farther in the argument than this:

First, That there was no assigned nor assignable motive for the criminal purpose charged by the indictment.

Secondly, That it was a purpose palpably impracticable, and which, therefore, no reasonable men could possibly have engaged in with any prospect of success.

Thirdly, That whatever might have been the probable issue of such an enterprize, detection and punishment were certain.

Fourthly, That, admitting the evidence you have heard to be free from all errors, the Defendants did not conduct themselves like men engaged in such a pursuit, nor appear to have been supported in a manner reasonably, or even possibly, consistent with the alledged conspiracy.

Fifthly, That, although the witnesses against them, if the transaction had been justly represented, must probably have been the greatest part of the Court, and certainly all that part of it elevated both by situation and authority above the rest; yet that there has been not only no such concurrence of testimony against the Defendants, but, on the contrary, the most correct and respectable witnesses have concurred in destroying the remainder of the proof.

Sixthly, That the expressions imputed to Lord Thanet cannot possibly affect him, without supposing that he publicly gave evidence against himself, even to one of the Judges, who, upon the evidence of his own senses, had authority to have punished him upon the spot.

Lastly, That it appears, by the whole body of the proof, that the confusion arose when the officers burst with improper and indecent precipitation into Court: That it began and ended almost in the same breath; and that, during the short moment of its continuance, there was such a scene of tumult and confusion as to render it impossible for the most attentive observer to give any clear and distinct accounts of the transaction.

If these conclusions, Gentlemen, be the unavoidable result of the Crown's evidence when brought to the common standard of man's reason and experience, it appears to me that you are bound to return a verdict for all the Defendants, even if I should call no witnesses; because, to justify a verdict of *guilty*, it is not enough to collect from the evidence that the Defendants *may* be guilty, or *probably are* guilty—*No*;—their innocence must be quite incompatible with the fair result of the whole proof; for, if two different conclusions may be reasonably drawn from the same state of facts, you are bound in justice to adopt the one which is supported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to say positively and firmly, because I am making my appeal to men of understanding and liberal education, that the evidence for the Crown, without any at all on my part to oppose it, taking it altogether, and considering the fair result of it, is not sufficient to convict any of the Defendants. This proposition, however, cannot be supported by general observations, nor by that general appeal to the proof which I have been engaged in: it must be examined accurately in the detail. I shrink from no part of it. I will sum it up to you as if I spoke to you from the Bench; and I pledge myself to make out,

out, to the satisfaction of every unprejudiced mind, that all that I have hitherto said to you, though absolutely necessary by way of introduction, has suffered from its generality ; and that the particulars of the proof will illustrate and confirm, beyond all question, every proposition of fact, and every principle of judgment, which I have already brought before you.

The first witness examined for the Crown is Mr. Serjeant SHEPHERD, who was joined with the Judges in the Special Commission. This examination is highly important in every part of it ; because, when it becomes necessary to compare the evidence of different witnesses in order to arrive at a safe conclusion from the whole, nothing can be so satisfactory as to find some person on whose testimony the judgment may repose with safety. My Learned Friend (as all who know him must have anticipated) delivered his evidence with the greatest clearness and precision, and in a manner most dispassionate ; and when you recollect, besides, that he is a man of singular ability, and that, from his elevated situation in the Court, he had the best opportunity of observing every thing that passed, you cannot fail to pay greater attention to his testimony, and to that of Mr Justice Heath, who immediately followed him, than to any other witnesses, however respectable.

In bringing before you Mr. Serjeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer disputed, but will take it up from the time when the Jury returned into Court. Mr. Serjeant Shepherd says, "*Lord Thanet was standing before the bar at which the prisoners stood, with his face turned towards the Court : he was rather to the right hand of Mr. O'Connor, nearest to the great street of Maidstone where the gaoler sat.*" Speaking of Mr. O'Bryen, he said, that "*he stood in the same line, but rather to the left of Mr. O'Connor ; that something had been before said by the Bow-street officers, who were making a noise, and had been desired to be quiet. When the verdict of Not Guilty was delivered, some persons (but whom, I know not) said, ' Then they are discharged ; ' and somebody at the table replied, ' No, they are not discharged.*" And here I have no objection, that what Mr. Serjeant Shepherd omitted may be filled up by Mr. Solicitor General's evidence, and that the answer from the table was to Mr. Fergusson, who, on hearing the verdict pronounced, had said the prisoner was discharged : he said it, however, before the Court had declared the law upon the subject. As counsel for the prisoners, it was natural he should be interested in their deliverance ; and he is not indicted for having mistaken the effect of the law, but for having conspired to obstruct the Court in administering it. The Attorney-General said, very properly, " I bring the Defendants before you, not for consider-
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ing the prisoners discharged by the verdict, but for an attempt to rescue them by violence and tumult, after the Court had declared that they were in custody."—"At this time," continued the learned Serjeant, "Mr. Justice Buller said to the gaoler, 'Put the other prisoners back, and let O'Coigly stand forward;' when one of the Bow-street officers stood up on a form, and said he had a warrant against Mr. O'Connor." This, you observe, was the first time there was any mention of a warrant in Court: so that what had before fallen from Mr. Fergusson was merely his sudden idea of the effect of the verdict of Not Guilty at the moment it was pronounced, and which, at all events, must, in a few minutes afterwards, have delivered the prisoner; and there is no evidence whatever, that, at the time he said so, a fresh custody was a matter of apprehension or contemplation.—"Whilst Mr. Justice Buller was passing sentence, my attention," continued Mr. Serjeant Shepherd, "was directed to O'Coigly; and when he had finished, I observed Mr. O'Bryen turn round, and LOOK at Mr. O'Connor, and, immediately afterwards, LOOK DOWN with a very slight motion and inclination of his head." And here, Gentlemen, it is impossible not to admire that delicate sense of justice which no man possesses more than my learned friend the Serjeant, and which dictated to him the remarkable reserve which accompanied this part of his evidence. He recollected that a witness is not to put himself in the place of a Jury, by drawing *his own* conclusions from his own testimony; but accurately to state what he hears and sees, and to leave the conclusion to those whose province it is to decide. He therefore, with the utmost propriety, forbore from expressing what appeared to him to be Mr. O'Bryen's purpose; but said to you, "I rather chuse to describe his gesture;" which he accordingly did. This fact, therefore, delivered with the restraint which the integrity and understanding of the witness so properly suggested, affords no evidence whatever of evil design in Mr. O'Bryen, much less of concert or combination with the other Defendants; and indeed the proceedings of this very day have afforded an instance, how dangerous it would be for the most sagacious persons to collect, from gestures only, what passes in the mind of another. When Lord Romney, not chusing to advance in his evidence beyond what his memory with certainty suggested, declined giving a farther answer to a question put to him, the Noble and Learned Chief Justice interposed, and put the question to him again. I admit that it was his duty to do so—But his Lordship will forgive me if I say, and I appeal to his honour for the truth of it, that he was convinced at the moment, not only that I thought the *direct contrary*, but that I had publicly and rudely expressed a sensation of dissatisfaction; since, looking at me very significantly, his Lordship told me
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that it was his duty to repeat the question. Nevertheless, I do declare upon my honour, and I appeal to Mr. Gibbs, to whom I was speaking at the moment on quite a different subject, that no such idea was passing in my mind as my gestures were supposed to have expressed. Yet no man is a more acute observer of human nature than his Lordship; and nobody, certainly, was ever better acquainted with my countenance. So much for gestures. It is, indeed, strongly in Mr. O'Bryen's favour, that at the moment he looked down, as described by the witness, he could not be acting in concert with Lord Thanet; for Serjeant Shepherd saw Lord Thanet *at the very same moment*, and swore that he was standing with his face to the Court, and that he never changed his position. The Serjeant added, that "*when the last word of the sentence was pronounced, Mr. O'Connor jumped with his left foot upon the bar, and his left hand upon the shoulder of Mr. O'Bryen,*" but who does not appear to have held out his hand to assist him. Mr. O'Bryen, on the contrary, though he could not have but continued in view for some time longer, is charged with no one act whatsoever; and it would be strange indeed to convict a gentleman of a rescue, because, standing near a prisoner meditating an escape, he had laid his hand upon his shoulder. But this part of the case will be put quite at rest hereafter; because Mr. O'Bryen is perfectly well known to several gentlemen of distinction, present in Court at the time, and not at all implicated in the riot, who will all tell you that they saw him distinctly, and that he was not concerned in any violence or disturbance whatsoever. I am not, however, called upon to do this, because there is literally no proof to be answered.

The remainder of Serjeant Shepherd's evidence, as it applies to Lord Thanet, is so absolutely decisive, that you will be driven to pronounce by your verdict, whether you give credit to this most respectable and observing witness, or to a Bow-street officer, who was himself the author of the confusion; for the Serjeant added, that "*when Mr. O'Connor had jumped over the bar, and he had lost sight of him, the officers rushed into Court to arrest him, and a great noise ensued; and AT THIS TIME,*" (GENTLEMEN, THE TIME IS MOST MATERIAL AND CRITICAL, BECAUSE IT CAN APPLY TO NO OTHER THAN THE PRECISE TIME SWORN TO BY RIVETT), "*I saw Lord Thanet,*" said the Serjeant, "*standing as I have described him, with both his hands over his head,*"—which he also described to you by putting himself in the same defensive posture, as far more expressive of his situation than any words could communicate. This, I say, is the single point of time to be looked at; for the remainder of the Serjeant's original evidence, applying to a subsequent period, described a scene of great confusion, in which he said he could discover
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nothing distinctly; that many persons were upon the table, some asking questions, others endeavouring to restore order. It is not, therefore, at this period that you are to look, since no part of the evidence at all applies to it: but at the moment when Lord Thanet is alone affected by Rivett's evidence, the Serjeant's testimony has a direct and decisive application; for, upon his cross-examination, he said in so many words, "*I never saw Lord Thanet look round, or change his position as I have before described it, till the very instant the officers rushed into Court; and then I saw him with his stick, held as I before described it; but I am bound to say that he appeared to me to be acting on the DEFENSIVE WHOLLY.*" This concluding evidence is an exculpation of Lord Thanet, and must have been so intended. I did not even put the question to the witness: he himself conscientiously added, that he was BOUND (bound, of course, in justice to Lord Thanet, who was accused of *active violence*) to say, that he appeared to be only acting in his own defence. Now, Gentlemen, there can be neither honour, nor advantage, nor security, bestowed upon the administration of Government or Justice, which this prosecution is avowedly instituted to support, if men can be punished, not merely upon doubtful evidence, but upon evidence which directly contradicts the charge. That a Court of Justice must not be insulted, or even disturbed, is a proposition which must be acceded to by every man acquainted with the first elements of civil life—That a charge of such a high misdemeanour well justifies the solemnity of a trial in this place, is another proposition which cannot be disputed—But the heinousness of offences, and the necessity of suppressing them by punishment, does not alter the quality of the proofs by which they are to be established: On the contrary, it was pleasant to attend to the just reserve in that respect with which the Attorney-General laid the case before you: He stated his own evidence in general terms, but without commenting upon it, or enforcing it; reserving his observations till the evidence on both sides should be heard: but we are not even engaged at present in balancing contradictory evidence, but in shewing that the accusing evidence is in itself defective, and even exculpatory.

Mr. Serjeant Shepherd was properly selected as the first witness for the Crown. He sat, from his station as Judge, in an elevated position, where he had a better opportunity of observing than others; and he accordingly appears to have observed every thing which passed: Yet, instead of fastening guilt on Lord Thanet, he sees him, from the time the Jury returned into Court, standing in one position; not looking round as if he was watching the motions of Mr. O'Connor, or engaged with others in attending to them; not even looking towards the side of the Court

Court from whence the arrest was to proceed, but upwards to the Judges; not opposing his body as an obstacle in a narrow passage through which the officers were to pass; not presenting a front to them which a man of his strength, with the intentions imputed to him, must naturally have been expected to do; but standing, as any other person attentive to the trial, till the officers, apprehending a rescue, rushed with violence into Court, and pressed upon and assaulted him; for, had he not been pressed upon and assaulted, he could not have been seen by Serjeant Shepherd in a posture of defence: And if he was first active in obstructing and assaulting Rivett, in the manner which he, and he only, has sworn to, why should not Serjeant Shepherd have seen it? since his eye was so constantly fixed upon Lord Thanet, from the time the Jury returned with their verdict till the confusion became general, which is subsequent to the period of Rivett's evidence, as to enable him to tell you that he did not shift his position, nor make a gesture or motion, till the officers and others rushed in upon him; and *then, i. e.* immediately, at the same moment to which alone the evidence has any application, he sees Lord Thanet with a stick over his head, which he thinks himself bound to express, and even to *describe* to you as a passive posture of defence.—This evidence, which so completely exculpates Lord Thanet, is not less applicable to Mr. Fergusson; for if he, who is placed by all the witnesses as standing close by him, had been an active conspirator, armed with a stick, which he was flourishing over the heads of the officers, can you possibly suppose that he would have withheld his assistance from Lord Thanet, who was visibly overpowered; or that a man of Lord Thanet's strength, though assisted by Mr. Fergusson, who is above six feet high, and a young man of great activity and strength, should be perfectly passive under the blows of Rivett, endeavouring only to save his person from violence, without retaliation, or even a motion to the accomplishment of his object?

The evidence of Rivett is farther exposed, by his having denied that Lord Thanet had a stick—a fact established beyond all question; and by his swearing that he took the stick from Mr. Fergusson, and struck him with it—when it will appear by and by that he took it from behind his own coat when he assaulted Lord Thanet.—This last fact, however, I ought to have passed over at present, because it arises out of my own evidence, which I do not wish at all to mix with my observations on the case of the Crown.

Gentlemen, the other Judges, with the exception of Mr. Justice Heath (whose testimony will also support the innocence of the Defendants), have not been examined, though their positions in Court were so highly favourable: neither has the Bar been examined, who, if Lord Thanet had been in the situation which
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Some of the witnesses have described, must have all seen it to a man; and their not having been called, affords a strong inference that their evidence would not have been favourable.

Mr. Hussey, who was next examined, said, "*I saw Mr. O'Connor attempt to get over the bar,*" (a fact never disputed); "*and at that time Lord Thanet was standing with his back to the prisoners. I saw somebody pressing forward, who said he had a warrant; but I saw no paper. Lord Thanet SEEMED to press himself towards the bar, and SEEMED TO BE DESIROUS to interrupt his progress.*" I dare say, the Rev. Mr. Hussey meant to tell you what he saw; but he has expressed nothing. What can be collected from such expressions?—Can you convict any man upon evidence which imputes *no act*, but only a *seeming desirousness*. Lord Thanet SEEMED to press himself towards the bar, and *seemed* to be desirous of interrupting the officer's progress. Did the witness SEE him do the one, or the other? If he had, he would of course have so expressed it; and if Lord Thanet had actually done so, why should not Mr. Serjeant Shepherd have equally seen it, who observed him accurately *at the very same moment*? The same answer was given by the last witness, Mr. Parker; and from which one might have been desired also to conclude that Lord Thanet was an active rioter: He SEEMED to be encouraging—But what did he do when he SEEMED to be encouraging? He put his hands *so*!—What then? If I am not proved to be in combination or concert with any one, nor to have myself committed any act of violence, is riot or disorder to be imputed to me, only because, in the midst of a scene of uproar, I appear to be irritated from a sense of danger, or from insults which I have received? If, indeed, a person could not account for his presence in a scene of riot, the case might be different: the presumption might *then* supply the defect of actual proof. If people were engaged in the destruction of a house, or in the commission of any other violence, and I were seen bustling or making gestures in the midst of them, my very presence might be evidence against me: "How came you there, Mr. Erskine," might be the question, "at a distance from your own house, and in the middle of the night?" But these presumptions have here no application; for Lord Thanet was attending as a witness under the process of the Court, and is described by one of the Learned Judges as standing originally in his proper place, and not changing his position. The whole of Mr. Hussey's evidence, therefore, amounts only to this—that Lord Thanet SEEMED to press forward, and that, too, *at the very same moment* when Mr. Serjeant Shepherd described him as unmoved and motionless, with his back to the prisoner, and his face, of course, towards the Court.

Gentlemen, I feel that it must be painful to you to be obliged to attend to these minute observations; but it is a solemn duty imposed

imposed upon me to point out every fact and circumstance of the proof, by which you are sworn to regulate your verdict : the sameness and repetition are nauseous ; but that is the very strength of the Defendants' case, because it shews the concurrence of the testimony which acquits them. How, indeed, can one expect variety in the discussion of a transaction which, all the witnesses say, was like a flash of lightning, beginning on a sudden, when, from the apprehension of a rescue, the officers rushed into Court, and ending (as far as the evidence goes) in the confusion which almost immediately followed ; leaving only for your decision, whether, if, in such a crowd, it happens that I am rudely pressed upon, I am a criminal for defending myself ? and whether, if, in the midst of such a scene of confusion, some of my postures or gestures are not understood by others who see me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my personal liberty, and, what is still dearer to me, my personal honour and reputation ?

Lord Romney is the next witness, whose evidence was just what might have been expected from a person in his situation—highly interested in the honour of the County where he has great hereditary estates and honours, where he has important duties to perform, and where, owing a particular attention to the King's Court, he felt, no doubt, a corresponding anxiety that it should suffer no disgrace nor interruption in its proceedings. He was placed, besides, in that part of the Court where he was entitled by his rank to sit, from whence he had an opportunity of observing what was transacting. Thus circumstanced, he says, "*I saw the Bow-street officers FORCING a passage, AND STRIKING BLOWS:—whom they struck, I do not know; there was a sword brandishing on the table. Thinking things bore a serious aspect, I crossed the table, and saw the prisoner escaping: he was brought back by the javelin-men. I said to them, 'Form yourselves round the prisoner, for he is not yet discharged.' I was told afterwards I had said 'he was not acquitted:' I believe Mr. Fergusson said so: I have no doubt I made the mistake.*"—Gentlemen, undoubtedly Lord Romney meant only to say that Mr. O'Connor was not *discharged*; though the answer was not made to him by Mr. Fergusson—for I shall call the Gentleman himself who answered him; not that it is in the least material, except that it proves that Mr. Fergusson was noticed at that time by Lord Romney; and surely, Gentlemen, if he had been acting like the fool and madman, and, I will add, like the knave he has been represented to you—if, in his professional dress, he had been publicly flourishing a stick upon the table, Lord Romney, who was close by him, must inevitably have observed him; yet his Lordship does not speak of him as out of his place, or as engaged in any
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act of disorder or violence. Another most important fact is established by Lord Romney's evidence: For, though his Lordship said that he should have been so much hurt if the County had been disgraced, that his attention was not directed to individuals, and that in the confusion he could not tell who had been struck in the passage by the officers, yet he added, that *VERY MANY blows were struck, and MANY persons hurt.* Yet Rivett says, that Fugion struck no blows; that Adams struck no blows; that the Messenger struck none; nor he himself any but those which were struck at Lord Thanet. Rivett, therefore, according to his own account, was the only person engaged, and successfully engaged, against the rioters; yet you are desired to believe that a large combination of strong and active conspirators were favouring an escape by violence. This is quite impossible; and the blows, therefore, which were observed by Lord Romney, were the blows which the *officers themselves* wantonly inflicted: For it will appear hereafter, by witnesses whom the Court cannot but respect, and whose evidence cannot be reasonably rejected, that they rushed in like madmen, striking with violence the most harmless and inoffensive persons, which compelled others to put themselves into that passive posture of defence that Lord Thanet has been so frequently and so distinctly described in. There is nothing more that is material in Lord Romney's examination: Something was alluded to, respecting a conversation with Mr. Justice Lawrence; but his Lordship, with the greatest propriety, not chusing to advance beyond his most perfect recollection, did not particularize it;—nor could it be material; for, besides that it appears to be supplied by other evidences, if it had been of any importance, Mr. Justice Lawrence himself would no doubt have been called as a witness. For my own part, I think it extremely likely that it has been already correctly represented. Lord Thanet, smarting under the blows he had received, did not probably exhibit the same courtesy with Mr. Sheridan: but I have already observed to you, that this circumstance gives me another important witness—no other than Mr. Sheridan himself, whose deportment was thus remarked and approved of; for, besides that it is impossible to ascribe a criminal motive, either from public opinion, or acquaintance with the prisoner, which did not apply as much to the one as to the other, Mr. Sheridan will tell you, upon his solemn oath, that he observed all that passed; and he will be able most distinctly to exculpate both Mr. Fergusson and Lord Thanet from every part of the charge.

Gentlemen, I will now state to you the Solicitor-General's evidence. He says, "*I kept my eye fixed on Mr. O'Connor. When the Jury gave their verdict, I observed him and Mr. Fergusson: I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr.*"

" O'Connor put his leg over the bar: I called out, 'Stop him!' "
 " Mr. Fergusson said, 'He is discharged.' I answered, 'He "
 " is not discharged.' Mr. Fergusson then said to Mr. O'Connor, "
 " 'You ARE discharged.' I repeated, 'He is not discharged.' "
 " I observed the Gaoler lean over, and lay hold of Mr. O'Con- "
 " nor: Some person was at this time pressing forward, and "
 " Mr. Fergusson complained to the Court. The officer was "
 " pressing into Court, in order to get round to Mr. O'Connor."—
 Now, Gentlemen, it is fit just to pause here a little, to consider
 this part of the evidence. The time filled by it is not above
 two or three minutes—for it is only the interval occupied by
 the sentence upon O'Coigly; and if a combination had existed
 between Lord Thanet and Mr. Fergusson, and other persons in
 the secret, is it probable that Mr. Fergusson would have made
 himself the conspicuous figure which I am supposing the evidence
 truly to represent him to have done? His conduct, besides,
 appears quite different, from Rivett's account of it. Did he
 enter into private resistance or altercation? No;—He made a
 regular and public motion to the Court; the Judge yielded to
 the suggestion—the Officers were directed to stand back for the
 present, and then the sentence was pronounced. This is not
 the natural deportment of a person engaged in a conspiracy;
 Nothing but the purity of Mr. Fergusson's intentions, and the
 unconsciousness of offence, could have induced him to put him-
 self so publicly forward by a regular motion to the Court; and
 such a conduct is surely very inconsistent with that of a person
 who was meditating at the moment to carry his point by vio-
 lence, in the teeth of the Court which he addressed.—The Soli-
 citor-General further said, " Rivett, the officer, said he had a "
 " warrant against Mr. O'Connor. Mr. Justice Buller spoke "
 " to the officers, commanded silence, and proceeded to pass sen- "
 " tence. When the sentence was finished, I observed Mr. Fer- "
 " gusson, and some other persons whom I did not know, ENCOU- "
 " RAGING Mr. O'Connor to go over the bar." Here we must
 pause again. Mr. Gibbs asked the witness, upon his cross-
 examination, " Did you hear him say any thing? Did you see "
 " him do any thing?" The Solicitor-General proved no one
 thing which Mr. Fergusson said or did. I am sure I mean no-
 thing in the least disrespectful to the learned Gentleman; but
 it certainly did not occur to him at the moment, that it is not
 the office of a witness to pronounce by his own evidence that a
 man encourages or supports,—but he is to depose what he heard
 him say, or saw him do—from whence the Jury are to draw the
 inference which is fit. I really mean no sort of reflection;—
 perhaps it arose from the habits of the Court of Chancery, whose
 practice is very different from our's, and where the depositions
 are of a very general nature: But suppose the Solicitor were to
 die whilst I am speaking to you, and that, though you should be

be satisfied as to all the rest of the evidence, you wished to have it explained *with precision* what was intended to be conveyed when it was said Mr. Fergusson was ENCOURAGING, would you condemn Mr. Fergusson upon that evidence, without knowing distinctly what act he had committed? Could you convict a fellow-subject upon the general evidence that he encouraged mischief, without knowing *what he did*? Certainly not;—you must hear *the fact*; and it is then for you, and for you only, when you have heard it, to draw your own conclusion. The Noble and Learned Lord, with whom we in a manner spend our lives in this place, is in the constant course of saying to witnesses, Tell us what was done, and we will judge of its quality. By these observations, I am not impeaching the evidence of the Solicitor-General, but I am commenting as a lawyer upon the result of it; and I do say, as a lawyer, that it is giving no evidence at all, to swear that a man encouraged, or *appeared* to be encouraging, without stating the facts on which that impression of his mind was founded.—Mr. Solicitor-General went on to say, “*I did not see Mr. O'Connor till he was brought back by the officers: for at the instant that Mr. O'Connor jumped over the bar, three or four persons leaped from the witnesses' box upon the table, and mixed amongst the rioters; all the lights, except those before the Judges, and the chandeliers, were extinguished. Mr. Fergusson, at the moment Mr. O'Connor jumped over the bar, turned round, and APPEARED to follow Mr. O'Connor; BUT I WILL NOT POSITIVELY SWEAR IT.*” I am very glad, Gentlemen, that he did not; because it would have been unpleasant to swear that positively which will be positively contradicted—by those, too, who are of as good faith, and who had as good an opportunity of observing. It is a mere misapprehension; and I would say to the Solicitor-General, if I were to see him at his own table or at mine, *that he is mistaken*. Indeed, in a scene of confusion, no man can tell what he sees with any certainty or precision, and images are frequently confounded in the memory.—The Solicitor-General then said, *that Mr. Stafford jumped upon the table, and drew a sword*; and, speaking of Lord Thanet, he said, *he went across the table, and that he saw him in conversation with Mr. Justice Lawrence*, the particulars of which he did not hear; *but that, when he went across the table again, he said he thought it fair he should have a run for it: He said it rather in a tone of anger, in consequence of what had fallen from Mr. Justice Lawrence*. Gentlemen, this last part of the evidence applies to a point of time when the disturbance was at an end—after every thing had passed in the presence and observation of the Court—after the disturbance had given manifest and just offence to the Judges, and after they had declared that their proceedings had been interrupted,

and

and their authority insulted : You cannot, therefore, believe, that, under such circumstances, when Lord Thanet could not but know that high offence had been given to the Justice of the County, he should come voluntarily forward, in the hearing of the King's Judges, and confess himself to be an accomplice in a high misdemeanour. These observations are not made to induce you to believe, that Lord Thanet's expressions have been misrepresented to you ; but to convince you, that the making them at the time, and to the person to whom they were made, arose from a consciousness that he had no share in assisting Mr. O'Connor : any other construction of the expression would amount to the confession of a crime, of whose magnitude Lord Thanet could not, from his education and knowledge, be ignorant ;—a crime which is, perhaps, put by the Attorney-General in a very modest shape on this record ; for, without meaning to moot the point of law, I am not quite sure, that rescuing a person from a warrant for high treason, though impending, and not actually executed, is not felony at the least. The right of Mr. O'Connor to deliver himself from such a warrant, if he could escape before it was executed on his person, was an opinion which Lord Thanet might correctly or incorrectly entertain ; but to enhance the confession of such an opinion into an admission of the crime *in himself*, is contrary to every human principle and feeling, and, therefore, not a reasonable conclusion of human judgment.—Gentlemen, these are my observations upon the evidence of the Solicitor-General, as it affects Lord Thanet : and, as it applies to Mr. Fergusson, it is very important ; for if Mr. Fergusson had been flourishing a stick in the manner which has been falsely sworn against him, what should have induced the Solicitor-General to say, only in general terms, that he saw him *encouraging* ?—Will any of my Learned Friends maintain, that if the Solicitor-General could have proved in terms, that Mr. Fergusson had a stick in his hand till it was wrested from him by the officers in repelling violence by violence, that he would not have *distinctly stated it* ? It is not, indeed, asserted, that the Solicitor-General meant to convey that meaning by the term *encouraging* which he employed ; nor is it possible that the Attorney-General should not have stated a fact so material in his opening, if he had known he could establish it from the mouth of a Gentleman placed in so respectable a station in the world.

Gentlemen, Mr. Justice HEATH was next examined ; and there is no part of the proof more important, particularly as it affects Mr. Fergusson, than the evidence of that very learned, and, I must add, that truly honourable witness, who was one of the Judges in the Commission, and presiding at the trial. He said, that “ *a Messenger from the Secretary of State had applied to the Court for liberty to execute a warrant upon Mr.*

“ O'Connor ;

“ O’Connor ;—that permission had been accordingly granted :” So that Mr. O’Connor was not to be ultimately liberated, but was to remain amenable to the process in the hands of the officers :—That “ after the verdict had been given, and the sentence pronounced, the Messenger, VERY UNADVISEDLY, went to the corner most removed from the door, and said aloud, ‘ My Lord, may I now execute my warrant ?’ Presently afterwards, I saw Mr. O’Connor put one leg over the bar, and draw it back again.” I have already reminded you, Gentlemen, that at this time there was a doubt in the minds of some as to the effect of the verdict to liberate the prisoner ; and I admit there can be no doubt that Mr. O’Connor, when he put his leg over the bar, knew of the existence of the warrant, and intended to evade it. Mr. Justice Heath then said, “ A violent riot and fighting took place, such as I never before saw in a Court of Justice. It seemed to me to be between the constables on one hand, and those who favoured the escape of the prisoner on the other.” This shews plainly that Rivett did not speak the truth, when he said that the blows were all on the side of the rioters against the officers ; whereas the fray, as described by Mr. Justice Heath, arose at first from the activity, if not the violence, of the officers ; which I will confirm hereafter by the most respectable testimony. “ It being dark,” continued the Learned Judge, “ I could not see the numbers of the combatants ; but I think there must have been ten or twenty engaged in it. I saw Mr. Stafford brandishing a sword over their heads. The combat might last for five or six minutes. I saw Mr. Fergusson, in his professional dress, standing upon the table with many others. He turned round, and said, ‘ My Lord, the constables are the persons to blame : it is they that are the occasion of the disturbance.’ Before I could give him an answer, he turned round towards the combatants ; and then my attention was drawn FROM HIM to the more interesting scene of the fight.”—Every part of this evidence is a decisive exculpation of Mr. Fergusson. WHEN was it that Mr. Justice Heath saw him upon the table ? I answer, at the very moment, nay at the only moment when blame is attempted to be imputed to him. By whom was he thus observed ? Not by a common person, unqualified to judge, or uninterested in the order of the Court ; but by one of its highest and most intelligent magistrates. It appears further, that at the moment Mr. Fergusson publicly, and in the proper quarter, imputed blame to the officers (I do not mean such blame as should subject them to punishment, because they might be acting in the supposed discharge of their duty, but blame as it occasioned the disturbance), he did not endeavour to conceal his person from the Judges at this only period of imputed disorder, but regularly addressed the Court in the dress
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of his profession, and openly complained of the authors of the confusion. It is therefore quite impossible, upon Mr. Justice Heath's evidence, to mix Mr. Fergusson with violence; for the Learned Judge distinctly stated, that after having *seen and heard* him as he described him to you, he observed him *no longer*, his attention being withdrawn from him to "*the more interesting scene of the fight.*" Is not this a most positive declaration of Mr. Justice Heath, that the place where Mr. Fergusson stood was *not* the scene of the fight, and that he was not personally engaged in it? for he turned his eyes *from* him to the scene of the combat, and of course to the persons of the combatants; whereas, if Mr. Fergusson, with a person so remarkable, and in the dress of his profession, had been *himself* a rioter, the Learned Judge must have pursued *him* with his eyes instead of losing sight of him, and must have seen him more distinctly. But the truly honourable Judge does not leave the exculpation of Mr. Fergusson to any reasoning of mine, having concluded his evidence with these remarkable words: "*I must do him the justice to say, that in the short time I saw him, which was not above a minute or two, I did not see him do, or hear him say, any thing to encourage the riot. I thought myself in great danger, and all of us also.*" This testimony, Gentlemen, is absolutely conclusive. He saw, indeed, Mr. Fergusson, for but a minute or two; yet it is the only period to which the evidence against him has any reasonable application: it was not a riot of long duration, in which a man might be guilty at one part of it, though not at another; it was almost momentary; and the whole of the scene within the observation of any one spectator. When we consider, therefore, that this learned and reverend person stood in the same situation with the first witness who was examined for the Crown—that he had an opportunity, from his situation in Court, of seeing every thing which belonged to the scene of combat, as he termed it—and when he nevertheless so separated Mr. Fergusson from it as to feel himself *compelled* to say what he did in the close of his testimony—we ought to give to his words a weight beyond the voice of a thousand witnesses. A Judge can have no interest in such a subject; and you cannot justly appreciate such a testimony, without taking into your consideration his excellent character, his long experience in the world, and the deep regard which he cannot but feel for the faithful administration of justice.

Gentlemen, it is impossible for me to know how these observations affect you. Self-complacency (too common among mankind) frequently makes false estimates of the effects of argument upon others, by measuring them with the results of one's own understanding; an infirmity which frequently leads one to repose upon them as finished and conclusive, when the most

most material parts belonging to them have been omitted. This, perhaps, may be my own case at this moment; but it does strike me, I confess (accustomed as I am to the proceedings of Courts of Justice), that I should be perfectly safe in now leaving in your hands the honours and characters of my clients, even if I had not a witness to bring before you in their defence: Indeed, I have studiously avoided all consideration of my own evidence, in my remarks upon the case of the Crown; in every thing that I have said, I have wished you to consider that I had none at all to offer; and when I reminded you, in the preface of my address, that I had witnesses to bring before you, it was rather addressed to my Lord than to you, and rather directed to secure attention to my observations, than arising from any resolution to trouble you with hearing them. Nothing that I have hitherto advanced has been built upon any new fact to be introduced by me; I have been dissolving the evidence of the Crown by its own weakness: I have been insisting that the respectable body of it is the strongest proof for the Defendants, and that its only inconsistency is to be found where it affects them with guilt.

The next witness was Mr. Abbott, a gentleman at the bar. *“He saw Mr. O'Connor make a motion to leave the Court, and heard Mr. Fergusson say he was discharged. Mr. Solicitor-General answered that he was not discharged; and then either Rivett or Fugion said he had a warrant: there was then a little confusion; but the prisoners resumed their places, and Mr. Justice Buller proceeded to pass sentence on O'Coigly. When that was finished, Mr. O'Connor nor leaped over the bar towards his left hand; a great tumult and confusion took place.”*—No part of all this, Gentlemen, was ever disputed.—*“I saw Lord Thanet on the table nearly before Mr. Justice Lawrence.”* This is also nothing. If Lord Thanet mixed in the riot, it could not be near Mr. Justice Lawrence, but in the other part of the Court, where the prisoners were placed.—*“The learned Judge spoke to Lord Thanet, and said it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen. Lord Thanet then turned round, and said—I did not distinctly hear the first words, but the concluding words were: ‘TO HAVE A RUN FOR IT,’ or ‘FAIR TO HAVE A RUN FOR IT.’* Gentlemen, I will not weary you with a long repetition of the same observations. I have observed more than once already, that if Mr. Justice Lawrence had considered Lord Thanet as having done any thing to promote the riot, he would have acted accordingly; and it would be therefore trifling with your time and patience to detain you farther with Mr. Abbott's testimony.

Gentlemen, we are now arrived at Mr. Rivett; and, retaining

taining in your minds the testimony of the Crown's most respectable witness, on which I have been so long observing, I shall leave you to judge for yourselves, whether it be possible that what he says can be the truth, independently of the positive contradiction it will receive hereafter? Indeed, the evidence of this man administers a most important caution to juries, not to place too implicit a confidence to what is sworn with positiveness, but to found their judgments upon the most probable result from the whole body of the proof.

Rivett says, "*I saw a gentleman, whom I was told was Mr. Thompson, and I have never seen him since. He asked me what business I had there, and if there was any thing against Mr. O'Connor?*"—evidently meaning a warrant, as he afterwards explained it. I need not, however, pursue this part of his evidence, because he did not identify Mr. Thompson, though he sat before him in Court, but pointed to another person. I pass on, therefore, to that part where he described the state of the Court: "*Many gentlemen,*" he said "*were seated upon the Solicitors' bench,*" which has been already described to you as immediately before the prisoners, and without the Counsels' seat, in which Lord Thanet appears to have sat till he stepped into that of the Solicitors', where he was heard to speak to Mr. O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time that Mr. Serjeant Shepherd described him as standing unmoved, with his face to the Court, and his back to the prisoners:—Rivett went on to say, "*When the Jury were coming in, I endeavoured to go nigh to the Gaoler, when I was pulled down by the leg; and as soon as I turned round, I saw Mr. Thompson,*" (who turns out not to have been Mr. Thompson). "*I thought Mr. O'Connor looked as if he intended an escape. At that time there was a noise and violence; and Mr. Ferguson said to the Court, 'What business has this fellow here, making a noise?'*" Now, Gentlemen, this cannot be a correct statement as it respects Mr. Ferguson, since it has been sworn by all the Crown's most respectable witnesses, that he made it a regular motion from the Bar, and the officers were desired to stand back. "*I told his Lordship, I had a warrant from the Duke of Portland to arrest Mr. O'Connor; and the Judge said I should have him, and desired the Gaoler to take care of the prisoners for the present. The sentence was then passed on O'Coigly; and as soon as it was finished, Mr. O'Connor immediately jumped out from the bar: there was then a great confusion in Court; the gentleman who sat before me got up; Mr. O'Connor took to the left, and I called out to shut the door. I endeavoured to get forward, but was prevented by those gentlemen who had placed themselves before me and the other officers. I*"

"*was*"

" was pulled and showed down two or three times; but by whom I know not. I jumped forward as well as I was able, and was endeavouring to pursue Mr. O'Connor, when Mr. Fergusson jumped on the table, and with a stick flou-
 " rished it in this way, to stop me. Mr. Fergusson was in his gown. I sprang at him, and wrenched the stick out of his hand; and then he returned from the table, and went to his seat." I will not pause at this part of the evidence as it applies to Mr. Fergusson, but pursue it as it goes on to Lord Thanet; because, if I can shew you that its application to him is demonstratively false when compared with the rest of the Crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr. Fergusson also. He says, " I was then knocked down by a person who pushed at me with both hands, and I immediately struck that person three or four blows." You will here be so good, Gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your Lordships have the goodness to see how you have got it?

[Lord Kenyon and Mr. Justice Lawrence referred to their notes].

LORD KENYON.—I have it, " I struck him with my stick."

MR. ERSKINE.—Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly; because, whichever way you take it, it involves a direct and palpable contradiction: but there is nothing like the truth, and it is always the best course to appeal to the authority of the Court. His words were, " He showed me with both hands;" and in his cross examination he afterwards described it, " I struck that person three or four blows: He called out ' Do not strike me any more;' I replied, ' I will; how dare you strike me?' " You observe that he describes Lord Thanet as having no stick, and with having struck him; whereas Mr. Serjeant Shepherd saw Lord Thanet, at what must necessarily be the same point of time, standing with his face to the Judges, and his back to the prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the Serjeant saw him leaning back, and DEFENDING himself with a stick which he held in both hands over his head—an account, which, if any corroboration of such a witness could be necessary, I will establish by eight Gentlemen who were present, and who will add, besides, in contradiction of Rivett, that Lord Thanet was himself beat severely, and never struck the officer with either fist or stick. That Lord Thanet had a stick, is beyond all controversy; and, having one, is it likely that a man of his strength and activity, en-

gaged in such an enterprize, would only push at his opponent with his *hands*, or that Mr. Fergusson, who is charged as being an accomplice, would have contented himself with flourishing a little stick over his head?

MR. ATTORNEY-GENERAL.—I do not find that Rivett has at all said that Lord Thanet had a stick.

MR. ERSKINE.—I have been reading his original examination. I will state his cross-examination by and by, and then set both of them against the truth. He says farther, and to which I desire your most particular attention, "*I saw Mr. Fergusson flourishing a stick about the middle of the table. I went that way, to avoid the persons who had stopped up the passage. He endeavoured to prevent me; but I wrenched it from him, and struck him. I HAD NOT THEN SEEN LORD THANET.*" Now, Gentlemen, I have only to beg that you will have the goodness to make some mark upon the margin of your notes of this fact, which the witness has had the audacity and wickedness to swear to. I use these severe expressions which I have applied to no other witnesses in the cause, because I never wantonly employ epithets that are unjust. He was in such a situation that he cannot be mistaken in what he swears: neither does he qualify it with his belief; but takes upon himself to marshal the proceedings in his memory, and to affirm POSITIVELY both as to persons and times. Yet I will prove Mr. Fergusson to have been within the bar in his place when Rivett speaks of him as on the table, and CERTAINLY WITHOUT A STICK. I will prove this—not by Bowstreet officers, but by Gentlemen as honourable as any who have been examined. Mr. Rivett told you too, "*that he came along from the great street where the Star-Inn is, towards the prisoner, to arrest him; but that he went to the table to avoid the gentlemen who interrupted him in his passage towards him.*" Lord Thanet is one whom he positively fixed on as having done so. Lord Thanet then interrupted him in his passage to the prisoner, which induced him to go to the table where he had the conflict with Mr. Fergusson; and yet, according to his own deliberate declaration, he never saw Lord Thanet till *after* the stick had been flourished by Mr. Fergusson over his head, and till after he had wrenched it out of his hand: for *then it was*, and for the *first* time, that he swears to have seen Lord Thanet. This is totally inconsistent, not only with the whole course of the evidence, but even with his own. And I will prove, besides, by a gentleman* who sat next his Lordship, Mr. George Smith, the son of a late chairman of the East-India Company, a gentleman at the bar, and of independent fortune, that one of the first things Rivett did when he came into Court, was to press rudely upon HIM; and that Lord Thanet, without having struck a blow, or offered any resistance,

resistance, "was attacked by these men in a most furious manner ; which accounts for the attitude of defence in which he has been so often described.

No embarrassment or confusion can possibly attend the consideration of time : because, from the evidence of Mr. Serjeant Shepherd, there could be no interval. It was all in a moment. He saw Lord Thanet sitting down ; he rose, and stood with his face to the Judges ; and then the confusion began. But, at this time, I engage to prove most positively by many witnesses, that Mr. Fergusson was in his place at the bar, that he was forced upon the table in consequence of the tumult *after Lord Thanet had been knocked down*, and that he had no stick. This, indeed, is incontestibly established by the evidence of Mr. Justice Heath, who saw him in that situation till he removed his eyes from him to the scene of confusion, which he could not possibly have done if the confusion had not become general whilst Mr. Fergusson remained in his place ; and so far was he from seeking to mix himself with the riot which the officers were occasioning, that when Sir Francis Burdett, a gentleman possessed both of strength and spirit (if a rescue had been the object), was coming hastily across the table, from seeing the situation Lord Thanet was placed in, Mr. Fergusson, knowing that it would only tend to embroil instead of abating the confusion, took hold of him to prevent him, carried him bodily towards the Judges, desired the officers to be quiet, and, addressing the Court, said publicly, and in his place, " My Lord, it is the officers who are making all this disturbance."

What, then, is to be said for this Mr. Rivett, who swore that he never saw Lord Thanet till *after* his conflict with Mr. Fergusson on the table, although Mr. Fergusson will appear to have at this time been in his place ? Mr. Smith was as near Lord Thanet as I am now, when Rivett rushed by him, and attacked him, Mr. Fergusson being still in his station at the bar.

Gentlemen, he said farther, in his cross-examination, that "*he struck Lord Thanet several blows ; that Lord Thanet defended him to the last, but that he had struck him once or twice afterwards.*" This was after Mr. Fergusson had gone across towards the Judges ; so that the scene he describes, as relative to Lord Thanet, is not immediately upon his first coming into Court, but afterwards, when, having gone out of his course towards the prisoner from the resistance he had met with in the passage towards him, he was obstructed by Mr. Fergusson at the table : whereas all the witnesses agree in placing Lord Thanet in the Solicitors' box, the very passage which Rivett states himself to have left in consequence of resistance ; and therefore he must have passed Lord Thanet, in
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the Solicitors' box, *before* he could have approached Mr. Fergusson at the table; and if he met with any blows or interruption from him at all, he must have met with them *immediately upon his entering the Court*; for Mr. Serjeant Shepherd's evidence establishes, that at that period violence must have been used on Lord Thanet, as he was in an attitude of defence. Rivett further said, that "*Lord Thanet had nothing to defend himself against his blows,*" though Serjeant Shepherd saw and described him with a stick; and that "*he saw no blows struck by any body but himself.*" What then, is the case, as it stands upon Rivett's evidence? That no blows were struck but his own; though a Learned Judge has sworn to having seen many struck, and upon many persons; that he received no blows from Mr. Thompson—none from Mr. O'Bryen—none from Mr. Fergusson—none from any of the Defendants but Lord Thanet, nor from any other person in the Court. It is for you to say, Gentlemen, whether this statement be possibly consistent with a wide-spread conspiracy to rescue a prisoner by violence, of which the Defendants were at the head.

Sir Edward Knatchbull saw no blow given to Rivett. He said, "*I can by no means speak positively; but it appeared to me, that when somebody was endeavouring to keep Rivett back, he struck Lord Thanet with his fist. I saw no blow given to Rivett.*" So that Sir Edward Knatchbull's evidence, instead of confirming Rivett's story, mainly and importantly contradicts it.

Mr. Watson, the gaoler, was next examined. He remembers the directions given him, not to discharge the prisoner, which I will not detain you with; and says, that "*after sentence was passed, some person said to Mr. O'Connor, 'You are acquitted—What do you stand there for?—Why don't you jump over?' That Mr. O'Connor answered, 'Mr. Watson says I am not to go;' but that, immediately afterwards, he sprang over,*" &c.—Thomas Adams, who was then Mr. Justice Buller's coachman, "*saw Lord Thanet with a stick in his hand, and saw it lifted up.*" We had got rid of that stick upon Rivett's evidence, and now it comes back upon us again when it is convenient to have it lifted up. He describes the stick as lifted up in this position, (*imitating the witness*); whereas it could be in no such posture, as you must be convinced of from the observations I have already made to you: but this man's evidence is very material in this respect, *viz.* that in describing the assault of Rivett on Lord Thanet, he says, "*I heard Lord Thanet say to him, 'What do you strike me for? I HAVE NOT STRUCK YOU:—'*"—an expression of great importance in the mouth of such a person as Lord Thanet; and falling from him at the very moment when it could have proceeded from nothing but consciousness; and an expression that

that I will confirm his having used by several of my own witnesses.

Mr. Brooks, who was next called, says, he "*saw Mr. O'Connor when the Jury returned. Mr. Fergusson held a sword or stick over the heads of the people.*" A sword, or something else, given to us in this confused manner, adds no force to the evidence; more especially when, upon being asked if he can swear with positiveness, he admits that he cannot.

Mr. Stafford was then examined, who says, "*he sat under the Jury-box, and could see Lord Thanet distinctly.*" I particularly asked him that question, and how far distant he was from him: he answered me, "*Not above two yards from me—three times nearer than I am to you.*" He saw Lord Thanet, then, distinctly, at two yards distance, and from the beginning to the end of the confusion; yet he swears, "*He did not observe him engaged in any obstruction.*" Afterwards, when the tumult became general, this witness has been described as brandishing a drawn sword—no doubt, from a sudden apprehension of danger, and to avert it from that quarter. Now, suppose Mr. Stafford had come down, out of mere curiosity, to Maidstone, to hear the trial, and had been seen flourishing this drawn sword in the midst of the affray---what should have prevented Mr. Rivett from considering this gentleman as the greatest rioter of them all? Why might he not the rather have represented him as brandishing it to favour the escape of the prisoner? One cannot, indeed, imagine a case of greater cruelty and injustice; but what could have been his protection, if Mr. Fergusson can be convicted on the evidence you have heard? Was not his situation in Court, as Counsel at the Bar, equally respectable as that of the Clerk of the Arraignment? and is not the presumption of an evil design against the dignity of the Court equally removed from both of them? Yet the one is only described as flourishing a small stick; whilst the other was so wielding his metallic tractor, that if he had not pleaded a flat bar to the assize in the manner he conducted this faulchion, the issue must have been blood. Mr. Garrow said to him at the moment, "Take care that you do no mischief;" and undoubtedly Mr. Stafford neither did nor intended any; but that makes the stronger for my argument, and shews how little is to be built upon appearances which grow out of a scene of tumult. The case for your consideration seems, therefore, to be reduced to this---Whether you will believe the two Learned Judges, and the other respectable witnesses? or, whether you will depend upon the single and unsupported evidence by which violence has been imputed? Mr. Stafford, who was within two yards of Lord Thanet, has completely acquitted him; for had he been in the situation in which Rivett has placed him, what could possibly have prevented him from seeing
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ing it? It was also sworn by Rivett, that Mr. Fergusson had a stick; but upon appealing to Mr. Stafford's evidence, who sat just opposite to him, we find that he had none; but that *he extended his arms seemingly to prevent persons approaching that side of the Court.* Mr. Stafford admits, that when he saw Mr. Fergusson, it was in the midst of confusion; and it would be a harsh conclusion indeed that Mr. Fergusson is guilty of the conspiracy charged on this record, because, upon being forced out of his seat by the tumult which surrounded him, as I will shew you he was by several witnesses, he had extended his arms in the manner you have heard. Mr. Stafford added, that the gaoler had hold of Mr. O'Connor's coat; that Mr. Fergusson forced himself between them, and that the gaoler stretched his hand behind Binns to take hold of the prisoner. This must be a mistake; for Watson sat as where my learned friend Mr. Wood is at present (*pointing to him*), and Mr. O'Connor stood as where Mr. Raine is now sitting (*pointing to him*); and at no part of the time is it even asserted that Mr. Fergusson was in the box of the Solicitors, and consequently it was utterly impossible that he could have prevented the gaoler from keeping hold of the coat of the prisoner.

Mr. Clifford says, he sat near the Marshal. I thought he had said that he sat there as Marshal; and, not knowing the person of the honourable Gentleman, I thought he had been the Marshal of the Court. There was no new fact introduced by this witness.

Next came Mr. Cutbush. My Learned Friends appeared to be soon tired of his evidence; and it seemed to produce an emotion of surprise upon the Bench, that a witness, in such a stage of the cause, should give such extraordinary testimony. He said, "*I saw Lord Thanet; he was two or three yards from Mr. O'Connor. I observed nothing particular till I saw Rivett striking Lord Thanet on the back with a sword.*" Now, as it is admitted on all hands that no such thing ever happened, it affords another instance of the difficulty with which Juries can collect any evidence to be relied on in a scene of uproar and confusion.

The evidence of the last witness, Mr. Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the case of the Crown; and having accompanied this statement with the observations which appeared to me to apply to it, let me suppose that my task was finished; that I had nothing by which I could farther defend my clients; and that I were now to leave you to the Attorney-General's reply, and the assistance of the Court. Were this my situation, I should sit down confident that you could not pronounce a verdict against them, upon such equivocal evidence,
either

either honourable to yourselves, or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments which you have heard already with so much patience and attention; but I feel it to be my duty just to point out the inadequacy of the testimony.

The charge against the Defendants is, a conspiracy to rescue Mr. O'Connor from legal custody, by tumult and violence;—all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwise relevant nor credible than as the means employed to effectuate that criminal purpose. Your belief of that purpose can therefore be the only foundation of a righteous verdict. Yet not only no part of the proof applies to establish it, but the existence of it is negated by every principle which can guide the human judgment. No motive, either built upon fact, or flowing from reasonable presumption, has appeared: none has even been suggested: the object, thus pursued without an interest, is palpably useless and impracticable—detection and punishment inevitable—the crime, if committed, committed before the whole Court, its Judges, and Officers; yet the evidence of it painfully and lamely extracted from a few, and that few overborne by the testimony of the most respectable witnesses, best situated to observe, and best qualified to judge of what was passing. I have therefore no more to ask of you, Gentlemen, than a very short audience, while I bring before you the Defendants' evidence.—My case is this:

It stands admitted, that the confusion had not begun when the Jury returned with their verdict—that there was only a motion towards it when the officers were directed by the Court to be silent, and to stand back. The period, therefore, to be attended to, is the conclusion of the sentence on O'Coigly, when the officers, from their own account of the transaction, believing that Mr. O'Connor intended to escape from them, and giving them credit that such intention could not be frustrated without some violence and precipitation, rushed suddenly through the Solicitors' box, where they met indeed with resistance, but a resistance which was the natural consequence of their own impetuosity, and not the result of any conspiracy to resist the execution of the warrant.

To establish this truth with positive certainty (if indeed it is not already manifest from the whole body of the proof), I shall produce, as my first witness, Mr. George Smith, whom I before named to you, and who was one of the first persons in their way on their entering the Court. He sat as near Lord Thanet as I now stand to where his Lordship sits before you, and who, upon the principle of this prosecution, should, above all others, have been made a Defendant; for he will admit freely, that he endeavoured to push them from him with his
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elbow,

elbow, when they pressed upon him with great and sudden violence : he will tell you that at this time Mr. Fergusson was in his place at the bar ; that Lord Thanet was in the place where Serjeant Shepherd described him ; that he was violently struck, without having given the smallest provocation, without having made any motion, directly or indirectly, towards the rescue of the prisoner, or even looked round at that time to the quarter where he stood : that Lord Thanet, in order to escape from this unprovoked violence, so far from approaching Mr. O'Connor, endeavoured to get nearer where the Counsel sat, when Rivett, instead of advancing straight forward in pursuit of his object, which was to arrest the prisoner, levelled repeated blows at him, as he was obliged himself to admit, whilst Lord Thanet lay back in the manner which has been so often described to you, protecting his head from the blows he was receiving.

In the same seat was Mr. Bainbridge, a gentleman educating for the Bar, a near relation of the Duke of St. Alban's, and a pupil, I believe, of my honourable and learned friend, Mr. Wood ; a person who cannot reasonably be suspected of giving false testimony, to encourage violence and outrage against the laws of his country. Mr. Bainbridge will swear positively, that, when the officers came forward, Lord Thanet was in the Solicitors' box, and Mr. Fergusson in his place at the bar, where he remained till the witness saw him forced out of his place, and obliged to stand upon the table, *and that he had no stick*. What, then, becomes of Rivett's evidence, who swore he never saw Lord Thanet till after this period, although it is admitted that it must have been by the tumult, in which he falsely implicated his Lordship, that Mr. Fergusson was driven out of his place ? This is absolutely decisive of the case :—for it will appear farther, that Mr. Fergusson continued in his place after the period when Lord Thanet was seen defending himself. It was rather insinuated, than sworn to distinctly, that there were gentlemen coming from the other end of the Court, as if to lend their assistance ; but this operates directly in exculpation of Mr. Fergusson, who prevented Sir Francis Burdett from approaching to that quarter of the Court. Sir Francis was certainly not advancing for the purpose of riot, but to extricate Lord Thanet ; yet Mr. Fergusson, lest it should add to the confusion, publicly prevented him, under the eye of the whole Court.

The next witness I shall produce to you will be Mr. Charles Warren, son of the late highly celebrated physician---a most honourable young man, and who, I verily believe, will be as great an ornament to our profession, as his father was to his. Mr. Warren was placed at the table, attending in his gown as Counsel, and had the most undeniable opportunity of seeing Mr.

Fergusson,

Fergusson, who sat near him, in his gown also. What Mr. Fergusson did cannot be matter of *judgment* or *opinion* in such a witness, but matter of *certainly*: the conduct imputed, if it really existed, could neither be unobserved nor forgotten; it was exactly the same as if I were at this moment to break out into madness, and insult the Court.—In such a case, would any of you qualify your evidence of such a scene, passing before your eyes, with *I think*, or *I believe*?—No:—
 “you would say at once, I saw that gentleman hold up his fist, and insult and threaten the Judges. Such extraordinary transactions address themselves directly to the *senses*, and are not open to qualifications of opinion or belief. For the same reason, Mr. Smith, and Mr. Bainbridge, must both be perjured, if the evidence of Rivett be the truth; and Mr. Warren (subject to the very same observation) will swear positively that he saw Lord Thanet severely assaulted, and **THAT HE DID NOT STRIKE**. Is this a mere negative, in opposition to Rivett’s affirmative oath? Certainly not: for there are some negatives which absolutely encounter the inconsistent affirmatives, and with equal force.

Let me suppose any man to say at this moment, “*Mr. Mackintosh*” (who sits close by me) “*struck Lord Thanet*,” who is just before me, whilst I was speaking to you, the Jury; and I were to answer that “*he did not*,”—that would, no doubt, be in *form* a negative proposition; but it would comprehend a counter affirmative if I had seen Mr. Mackintosh in such a situation, relative to Lord Thanet, as that he was not near enough to strike him, or that, if he had struck him, I must inevitably have seen him. Upon this principle, which it is indeed pedantry to illustrate, because common sense obtrudes it upon the weakest, Mr. Warren will tell you **POSITIVELY** that Lord Thanet did *not* strike Rivett; and that, at the time when this violence is imputed to him, Mr. Fergusson, who is reported to have begun the affray, and who had, it seems, a stick wrenched from him, was in his place at the bar.

I will then call to you Mr. Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr. Bouverie, member of parliament for Northampton. He stood under the witness-box, which may be as in that corner, (*pointing to a corner of the Court*), commanding a full and near view of every thing that could pass; and he will confirm, in every particular, the evidence of Mr. Warren, Mr. Bainbridge, and Mr. Smith. I will also call Mr. Whitbread, who attended the trial, as a witness, who was near Mr. Sheridan, and, like him, did every thing in his power to preserve the peace. Mr. Whitbread’s situation I need hardly describe to you. He is a man of immense fortune, acquired most honourably by his father in trade, and who possesses almost incalculable advantages,

advantages, which are inseparably connected with the prosperity and security of this country: yet, from the mouth of this most unexceptionable witness, the most important parts of the evidence will receive the fullest confirmation. I shall also call Mr. Sheridan, who shewed his disposition upon the occasion by his conduct, which was noticed and approved of by the Judges. This will furnish the defence of Lord Thanet and Mr. Fergusson.

As to Mr. O'Brien, it is almost injurious to his interests to consider him as at all affected by any part of the proof: he does not appear to have been at all connected with Mr. O'Connor. It has been said, indeed, that he proposed a bet to the officer on the existence of the warrant, and that he afterwards whispered Mr. O'Connor; but at that period it could not relate to an escape. It has been said, farther, that he was on the spot, and that Mr. O'Connor put his hand on his shoulder: but that was no act of Mr. O'Brien's; he neither touched him, nor used any effort to assist him—no violence or obstruction is even imputed to him: even RIVETT HIMSELF has not attempted to say, that, in his progress towards the prisoner, he was insulted by Mr. O'Brien, or that he even saw him.

I am not Counsel for Mr. Thompson, or Mr. Browne; but I apprehend I have a right to call them as witnesses, and upon that I shall presently take the Court's opinion.—Rivett was desired to look round, to identify Mr. Thompson, but pointed to another gentleman who sat next him, and who had no sort of resemblance to him in person. Mr. Thompson, therefore, is not touched by any part of the proof; and nobody has said a word concerning Mr. Browne (as I before remarked to you), except that there was a gentleman, in a grey coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the Court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cause has imposed upon you; a cause which, independently of the Attorney-General's privilege to choose the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at bar, as an oppression of the defendants, I acknowledge the advantages they have received from it, not only in the superior learning and discrimination of the Court, but in the privilege of being tried by a Jury of Gentlemen assembled at a distance from all local prejudices, which has enabled them impartially to listen to both sides with such equal and such patient attention. I have yet another advantage from a trial in this place, which it is fit I should advert to. It enables me to remind the noble and learned Chief Justice of a course of practice from which he has never deviated, and from whence my clients will receive most abundant advantage.

Throughout

Throughout the numerous criminal trials which it has fallen to my lot to see his Lordship judicially engaged in, I have observed this uniform course. Where the decisions will not fit exactly the interest of the accused, and where Counsel, as far as professional honour will warrant, are driven in argument to qualify them, and to divert their rigorous application, the Noble Lord summons up all the vigour of his mind, and fills up the full scope of his authority, to prevent the violation of the law; because the law is an abstract and universal rule of action, the application of which can suffer no modification: but when the *law* is clear, and the question only is, whether persons accused of a breach of it are guilty or not guilty upon *evidence*, above all upon evidence which is contradictory—where testimony is opposed to testimony, and witness to witness, in such confounding equality as that a Jury cannot with clearness arrive at the truth, I have a right to bring it to his Lordship's own recollection, and, for his honour, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to Juries, but even to interpose his opinion with the prosecuting Counsel. In a civil case, indeed, where one man asserts that to be his right or property which his opponent controverts, a Jury must give a verdict for the one or for the other, though the scales may appear to be equal. In such cases a Judge is frequently obliged to lament to Juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfil with satisfaction: but I speak the language of his Lordship, and of all Judges, when I say, that *between the public and individuals* there can be no such race for judgment. Far different is the character of English justice; and there occurs to my mind at this moment a recent and memorable example. Whilst the attention of the House of Commons was attracted to the great cause of humanity, in its proceedings upon the Abolition of the Slave-Trade, a case was brought for the consideration of a Jury, arising out of the ill-treatment of a negro in an African ship. The captain upon his oath denied the alledged cruelty, and a bill of indictment for perjury was found by a Grand Jury against him. I conducted that prosecution at Guildhall, and established the ill-treatment by several witnesses; and although not one man, who was in the ship at the time, was called to contradict them, yet, on its only coming out, not from their admission, but upon the evidence for the defendant, that they had held a different language in an ale-house at Bristol, Lord Kenyon interposed on my rising to reply for the Crown. I had myself no doubt of the guilt of the defendant; but his Lordship, though without even expressing that he himself entertained a different opinion, declared that the interests of the Public never could be served by a conviction on

such contradictory evidence. We ought not, he said, with such materials, to leap in the dark to the conclusion of guilt. I acquiesced, as it was my duty ; and the defendant, without any appeal to the Jury on the evidence, was acquitted.—I should only weary you, Gentlemen, by a repetition of similar instances which crowd into my memory at this moment. I am sure I could name above twenty, in this very place, upon proceedings for the obstruction of officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the Noble and Learned Lord, not being able to detect perjury in the defence, has uniformly held this language to Juries, and even to the Counsel for prosecutions : “ This is not a case for conviction ; “ the defendant *may* be guilty, but there is not a sufficient “ preponderation in the evidence to pronounce a penal judgment.”

These are the maxims, Gentlemen, which have given to British Courts of Justice their value in the country, and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the same time the sting of this case, as it deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But, if the Courts of England are, on this very account, so justly popular and estimable ; if they have been, through ages after ages, the source of public glory and of private happiness, *why is this trial to furnish an exception ?* For myself, I can only say that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people happy and contented under them. Let England be secure, and I am sure no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession,

“ Oh for a lodge in some vast wilderness,
 “ Some boundless contiguity of shade,
 “ Where rumour of oppression and deceit,
 “ Of unsuccessful or successful war,
 “ Might never reach me more ! ”

To conclude—If you think my clients, or any of them, guilty, you are bound to convict them ; but, if there shall be ultimately before you such a case, upon evidence, as to justify the observations I have made upon the probabilities of the transaction, which probabilities are only the results of every man’s experience in his passage through the world ;—if you should think that the appearances were so much against them as to have justified honourable persons in describing, as they have done,

done, their impressions at the moment, yet that the scene of confusion was such that you cannot arrive at a clear and substantial conclusion—you will acquit all the Defendants.

[*The Attorney-General retired from the Court.*]

Mr. Rous—My Lord, I am of Counsel for Captain Browne.

Lord Kenyon—When the Attorney-General comes in, I will put the question to him, whether he thinks there is sufficient evidence against him or Mr. Thompson?

[*The Attorney-General returned.*]

Mr. Garrow—My Lord, the Attorney-General has returned; if your Lordship pleases, I will put that question to him.

Mr. Attorney-General—I understand, since I went out of Court (and I beg pardon of your Lordships for so doing), that something has been said relative to Mr. Thompson and Mr. Gunter Browne. With respect to the former of those gentlemen, undoubtedly, his person having been mistaken here in Court, I should think it extremely improper that I should withhold from these Defendants the benefit of his testimony. With respect to Mr. Gunter Browne, I think there is some evidence against him, if I were struggling in this case, in a way in which I am perfectly sure your Lordship knows the Attorney-General never does struggle, for a conviction; but I am very ready fairly to say, I should act very improperly if I shewed any inclination to convict at all; and, therefore, I give up the prosecution with respect to him also.

Lord Kenyon—If you mean to avail yourself of their testimony, now is the time.

Mr. Rous—Mr. Gunter Browne is confined to a bed of sickness.

Lord Kenyon—Gentlemen of the Jury, as far I can recollect the evidence, there is not sufficient evidence to call upon these Gentlemen for their defence; if you think so, you will acquit them.

MR. BROWNE, *Not Guilty.*

MR. THOMPSON, *Not Guilty.*

EVIDENCE

EVIDENCE FOR THE DEFENDANTS.

Mr. George Smith sworn.—Examined by Mr. Gibbs.

Q. You were present at this trial ?

A. I was.

Q. The row in which the Solicitors sat represents that where we are now sitting, and the Counsel before us ?

A. It does.

Q. And the place in which the prisoners stand was behind ?

A. Yes.

Q. In what part of the Court were you ?

A. Almost during the whole of the trial I sat in the Solicitors' seat.

Q. Are you at the bar ?

A. I am.

Q. I believe the prisoners stood in the place allotted for them, three in the front, and two behind ?

A. Exactly.

Q. Who were the three in front ?

A. Mr. O'Coigly, Mr. Binns, and Mr. O'Connor ; Mr. O'Connor was on the left as he looked at the Judges, and on the right as they looked at him ; Mr. Binns in the middle, and Mr. O'Coigly next the gaoler ; my seat was directly under the gaoler, at the end of the seat.

Q. Do you remember the time when the verdict was brought in ?

A. Perfectly.

Q. Did you observe any thing happen at that time ?

A. I recollect that Mr. O'Connor put his leg over the bar, and there was a press behind me, but a very trifling one, to get at him.

Q. This was before sentence was pronounced ?

A. Before sentence was pronounced.

Q. Did that cease ?

A. Yes : silence was called, and that disturbance ceased. The Judge then proceeded to pronounce sentence ; I was at that time sitting, as I have described, at the end of the seat directly under the gaoler ; and I leaned against a projecting desk, looking up at O'Coigly during the whole of the sentence, so that my back was to the Bow-street officers : that instant that the Judge concluded his sentence, Mr. O'Connor put his leg over the bar, and the gaoler caught hold of his coat.

Q. At this time did you observe where Lord Thanet sat ?

A. At

A. At that particular moment I cannot say I saw my Lord Thanet, but I know that he and Mr. Brown were both sitting on the Solicitors' seat, within one of me.

Q. Where was Mr. Fergusson at this time?

A. I do not know; I did not observe him at that time.

Q. You were proceeding to state what passed after the sentence was pronounced?

A. At the same moment that Mr. O'Connor put his leg over the bar, before I had recovered myself from the leaning position in which I sat, one of the Bow-street officers, I am not sure whether it was Rivett or Fugion, *set his foot upon my back*. I immediately started up and drove the man off, and asked him what he meant.

Q. How did you drive him off?

A. With my elbow, and by starting up.

Q. What was his answer?

A. *He damned me*, and told me he had business, and would press on.

Q. Was there good room for him to get by, or was this a narrow place?

A. It was so narrow that it was impossible two people should pass without contrivance; a short struggle followed between the officers and myself, for there were several people who were pressing behind, and I could not get out of the seat where I was without making that resistance.

Q. How did you get out at last?

A. At last I struggled a great while with my elbows to make room for myself; I got up, stepped upon the division between the Solicitors' and the Counsels' seats, and from thence to the table; I then turned round immediately, and I then saw the same man pressing upon my Lord Thanet, in the same way in which he had been pressing upon me.

Q. You said Lord Thanet and Mr. Gunter Browne were within one of you?

A. Yes.

Q. Did you observe this immediately upon your extricating yourself?

A. *The instant I extricated myself I turned round and saw a man pressing upon Lord Thanet*, with this difference, that when I resisted him, I did not observe that he had any staff or stick, but when I saw him with Lord Thanet *he was striking Lord Thanet with a stick*, but what the stick was I cannot say; Lord Thanet stood with a short stick in both his hands, dodging with his stick, and receiving the blows of the Bow-street officer upon that stick.

Q. Lord Thanet was guarding himself, with his hands up, from Rivett's blows?

A. Exactly so.

o

Q. You

Q. You do not know which officer it was?

A. I am not certain, I think it was Rivett.

Q. Before this happened, Rivett had had a struggle with him?

A. I had had a struggle with Rivett in the first instance; and I should state, that during that struggle Mr. O'Connor, who had endeavoured to get away, had effected his escape from the gaoler; and the consequence was, that the people pressed forward from the opposite end of the bench, to prevent Mr. O'Connor from effecting his escape; by which means every person who sat in that narrow seat, was placed, if I may say so, between two fires, for the Bow-street officers were pressing up from one side, and the crowd were pressing up from the other side.

Q. You say, as soon as you got from Rivett, you saw him instantly engaged in this way with Lord Thanet?

A. Yes.

Q. Could Rivett, in the interval between the struggle with you and the struggle you instantly saw him have with Lord Thanet, have got over to the Counsels' table and had a contest with a man who had a stick, and taken that stick from him?

A. Impossible; I think so at least; the interval was no longer than that which elapsed from my getting from the seat to the division, and from thence to the table.

Q. Which you did as expeditiously as possible?

A. Certainly; for I felt myself in danger.

Q. When you say impossible, I need not ask you whether you saw the thing happen?

A. Certainly not.

Q. Had you your gown and wig on?

A. I had. Very shortly after I got upon the table, a man took up one of the swords, and drew it, and flourished it about over the heads of the people; very shortly afterwards I saw this sword coming in a direction immediately to my own head; I avoided the blow by springing off the table into the passage leading into the street.

Q. Did you at any time see Lord Thanet strike this officer, let him be whom he may?

A. I never saw Lord Thanet in any situation but acting upon the defensive.

Q. If Lord Thanet had struck the officer, do you think you must have seen it?

A. Certainly, during the time I had my eyes upon him.

Q. I think you told me you saw the officer first pressing by Lord Thanet, and then striking him?

A. Yes.

Q. And if he had struck the officer, you must have seen him?

A. Certainly, at that time.

Q. Do you remember Lord Romney coming down from the Bench ?

A. Perfectly well.

Q. Do you recollect, upon Lord Romney's saying the prisoner was discharged, or acquitted, any person making an observation to him ?

A. I remember there was an altercation between Lord Romney and myself, in consequence of his saying that the prisoners were not acquitted.

Q. There was a misapprehension between the words acquitted and discharged ?

A. I apprehend so.

Q. However, you were the person that had the conversation with him ?

A. Yes.

Cross-examined by Mr. Attorney-General.

Q. You insisted that they were acquitted, and Lord Romney insisted that they were not acquitted ?

A. Exactly so.

Jury. I wish to ask whether you left the Court during the riot ?

A. No, I did not ; I jumped off the table in consequence of a blow that I saw coming at my head, and I shortly after returned to the table again.

Q. Did you observe Lord Thanet leave the Solicitors' box ?

A. No, I did not.

Q. Do you know whether he did, or not, leave the Solicitors' box ?

A. I cannot say, for the riot lasted a very short time after I had left the table.

Lord Kenyon. Was the blow aimed at your head ?

A. By no means ; it appeared to me that all the blows struck by that sword were struck by a man that did not know what he was about.

Q. Were there any wounds ?

A. I heard there were, but I do not know of any.

Mr. Bainbridge sworn, examined by Mr. Beß.

Q. You are a student of the law ?

A. I am.

Q. Were you in Court during the trials at Maidstone ?

A. I was.

Q. In what part of the Court did you sit at the time of the riot ?

A. When the Jury returned, I left my place at the table, and
went

went to the place where the Solicitors of the defendants sat, to speak to Mr. Fergusson.

Q. Did you observe Mr. Fergusson during this time ?

A. Mr. Fergusson sat directly before me.

Q. Did you observe Lord Thanet ?

A. Lord Thanet sat on my right hand, close to me.

Q. So that you had a complete opportunity of observing them ?

A. I had a complete opportunity till the fray began.

Q. Do you recollect the Bow-street officers coming in ?

A. I remember observing the Bow-street officers standing on the right hand side of the dock.

Q. Do you remember seeing those Bow-street officers at the time the Jury pronounced their verdict ?

A. I did.

Q. What did you observe them doing at this time ?

A. I observed two standing with their eyes fixed upon Mr. O'Connor, as the impression struck me.

Q. Do you recollect them after the sentence was pronounced ?

A. Yes I do.

Q. What did you see them do at that time ?

A. I observed one, whom I had from observation upon the trial known to be Rivett, put his knee upon the bench that came over into the Solicitors' seat, and get over, and press directly forward.

Q. You say he pressed forward : in what direction ?

A. He pressed directly on to the bench where the Solicitors for the Defendants had sat, and the Counsel for the Defendants had sat.

Q. Where was Lord Thanet at this time ?

A. My Lord Thanet was on the right hand of me, and in the place where the Solicitor for Mr. O'Connor had sat, I believe most part of the day.

Q. Where was Mr. Fergusson then ?

A. Directly before me, IN HIS PLACE.

Q. Was Mr. Fergusson at that time in the Solicitors' place, or the place appropriated for the Counsel ?

A. Mr. Fergusson was IN HIS OWN PLACE, and the place which he had kept the whole day.

Q. Did you see the Bow-street officers attempt to pass Lord Thanet ?

A. I saw the Bow-street officers attempt to pass Lord Thanet ; and Lord Thanet, upon being pressed upon, moved upwards, as if to prevent being overpowered or crushed, and got upon his legs.

Q. Did Lord Thanet do any thing to obstruct this officer ?

A. To my opinion, nothing in the world.

Q. I think you say, on the contrary, he moved up ?

A. He endeavoured to get upon his legs ; for the pressure of the

the people upon him was such, that, if he had not got up, he must have been totally knocked under the bench.

Q. At this time did you see whether Lord Thanet struck this Bow-street officer, or not?

A. I never observed Lord Thanet strike the Bow-street officer, or any body else.

Q. From the situation in which you were at this time, if he had struck him, do you think you must have seen him?

A. Certainly I must.

Q. If Lord Thanet, at this time, had been taking an active part in the riot, must you have seen that also?

A. I must have observed that too.

Q. Did Lord Thanet do any thing to aid the escape of Mr. O'Connor, or add to the tumult which then prevailed in Court?

A. Nothing in the world, that I saw.

Q. Did you observe Mr. Fergusson at this time?

A. I did.

Q. Now, I will ask you if Mr. Fergusson struck any body?

A. I never saw Mr. Fergusson strike any body; and, if he had struck any body, I think I must have seen it.

Q. Did it appear to you that Mr. Fergusson encouraged Mr. O'Connor, or at all favoured him in his escape?

A. Not the least, quite the contrary.

Q. Did you observe whether Mr. Fergusson had any stick?

A. I observed no stick whatever.

Q. If Mr. Fergusson had at this time been brandishing a stick, do you think you must have seen it?

A. I must certainly have seen it, from the situation I was in.

Q. During this time did Mr. Fergusson continue in the same situation in which he was?

A. He continued in his seat till he was pressed upon, and the whole was a scene of confusion.

Q. Did it then appear to you that Mr. Fergusson only left his seat in consequence of the pressure upon him?

A. That was the only cause, as it struck me.

Q. Do you recollect seeing Rivett engaged with Lord Thanet?

A. I do; he appeared to me to be striking him, and trying to beat him down; in short, he was in the act of offence, with his hand uplifted, as it appeared to me.

Q. Do you recollect Mr. Fergusson saying or doing any thing at that time?

A. I remember Mr. Fergusson asking him to desist, and asking him if he knew who he was striking.

Q. Did he give any answer to that?

A. He, I think, made use of words to this effect: "I neither know nor care." Upon which Mr. Fergusson said, "That is Lord Thanet, I insist upon your not striking him."

Q. Do

Q. Do you recollect whether Rivett had a contest with Mr. Fergusson before he got to Lord Thanet?

A. Not to my observation; I had seen none.

Q. From the situation in which Mr. Fergusson was, could Rivett have got a stick out of Mr. Fergusson's hand?

A. I think, if he had had a stick in his hand, he might; I observed no stick in his hand.

Q. Could he have struck him, and wrested the stick out of his hand, without your seeing it?

A. I think not.

Q. You was there during the whole of this tumult?

A. I was in Court during the whole of the trial.

Q. Was Mr. Fergusson any part of that time in the place allotted for the Solicitors?

A. Never.

Q. Was he ever nearer to Mr. O'Connor than the place for the Counsel?

A. Never; I was between them.

Q. Where did he go, when he quitted that place?

A. Towards the Judges, and away from the tumult.

Q. During the whole of this time, did Mr. Fergusson at all appear to encourage the tumult?

A. Quite the contrary, I think.

Cross-examined by Mr. Law.

Q. You have said that Mr. Fergusson, so far from encouraging this tumult, acted quite the contrary?

A. Yes.

Q. Am I to understand you, that he endeavoured to dissuade them from riot?

A. I heard him say to Mr. O'Connor, "Be quiet, and keep your place; nothing can hurt you."

Q. Was that after the acquittal?

A. It was after the verdict of acquittal had been given, and before the sentence was passed upon O'Coigly.

Q. But after the sentence was pronounced, did you observe Mr. Fergusson doing any thing that was quite the contrary?

A. He seemed to say, "Be quiet;" and, from Mr. Fergusson desiring him to keep his place, and having complained to the Court of a person that wished to make a tumult, he appeared to me to be a person who wished to keep every thing quiet and in order.

Q. You have told us, that, during the whole day, Mr. Fergusson kept the same place?

A. As to the same place, I believe he might have moved to the right; he might have been, perhaps, to the right of Mr. Plumer in the morning; but what I mean is, that he never moved out of the place where the Counsel sat.

Q. Then

Q. Then he must have been under your own observation the whole of the day ?

A. Yes.

Q. Did he never appear to be upon the table in the course of that day ?

A. While the Jury were retired, he went across the table, and, I believe, went to speak to somebody near the witnesses' box ; but at that time people were conversing and walking about, but there was no idea of a riot then.

Q. Will you say, after the verdict was brought in, he was never upon the table ?

A. *He was never upon the table that I know of, till he was pressed upon by the Bow-street officers.*

Q. Did you, during the day, see a stick in his hand, or that he had not had a stick ?

A. I will swear that I did not see a stick in his hand.

Q. And you had him so much under your observation, that you must have seen it ?

A. As much as a person could do, sitting in a Court of Justice ; it was quite ridiculous to suppose he had a stick in his hand.

Q. Was you a witness, or concerned in that trial ?

A. No : I went from mere curiosity.

Q. You did not go with Mr. Fergusson ?

A. No.

Q. And you will swear that he never had a stick in his hand ?

A. I will swear I did not see a stick in his hand ; and I think I must have seen it, if he had.

Q. If you had him constantly in view, you must ?

A. It cannot be supposed that I had my eyes upon him for fourteen hours.

Q. WILL YOU VENTURE TO SWEAR, THAT DURING THE RIOT HE HAD NO STICK ?

A. I WILL.

Jury—Did Lord Thanet leave the Court during the riot ?

A. Lord Thanet moved, as Mr. Fergusson did ; upon being pressed upon, he got up upon the bench ; and that, when he moved up, Rivett was above him, and trying to strike him ; and Mr. Fergusson then said, " Who are you striking, Sir ? "

Jury—Whether he saw Lord Thanet, during any part of the period, near the the wicket-gate that leads to the narrow street ?

A. I saw Lord Thanet, I think, during the whole riot ; and I think, instead of being there, he went, when he did move, quite the contrary way, and not at all towards the gate.

Mr. Justice Lawrence—From Mr. Fergusson complaining of

of a tumult, it seemed as if he wished to keep every thing in order; who was the person that he complained of?

A. Rivett.

Q. That was before the sentence was passed?

A. Yes.

Q. How far was Rivett from Mr. Fergusson at that time?

A. I think he must have been about three yards.

Q. At that time was he not making use of this motion, (describing it), and say, "Keep back, where are you going?"

A. Yes; and I think Mr. Justice Buller then said, "What is the matter?" Mr. Fergusson then said, "Here is a person making a noise, and will force himself into the Court." Mr. Justice Buller then said, "What do you mean, Sir?" He then said, "My Lord, I have a warrant against Mr. O'Connor." He then told him to keep back.

Mr. Warren sworn, examined by Mr. Mackintosh.

Q. I believe you was present at the trials for high treason at Maidstone?

A. I was.

Q. Was you present the second day of those trials?

A. I was.

Q. Where did you sit during the evening of the second day?

A. Just by the witness-box, opposite to the Jury.

Q. After sentence was pronounced upon O'Coigly, tell us what you observed of the confusion that arose in the Court?

A. After the sentence of death was pronounced upon O'Coigly, the first part of the affray that I recollect was this: Mr. O'Connor endeavoured to get out of the dock: he got almost out of the dock, on the left side; the gaoler, who was on the other side of the dock, reached across the dock, and caught him by the coat: he detained him for a very short space of time in that situation; the coat tore, or slipped through his hands.

Q. At that time, when the gaoler had hold of Mr. O'Connor's coat, did any body reach or step backwards between them?

A. Nobody.

Q. Then Mr. Fergusson did not?

A. Certainly he did not.—Mr. O'Connor got away, either from the coat being torn, or slipping through the gaoler's hands; he got down upon the ground; he soon mixed with the crowd, and I lost sight of him: as soon as he endeavoured at first to get away, two persons, who had before appeared to be officers from Bow-street, with several others, rushed forward to apprehend him. In their endeavour to apprehend him, the first person upon whom they appeared to rush with any great violence,

violence, was Mr. George Smith, who was sitting at the end of the seat of the Solicitors for the prisoners: he was forced from thence, and came to the place where I was sitting. The next person that I observed forced from his seat, was Mr. Dallas, one of the Counsel for the prisoners; he came likewise and sat near me; the officers still rushed on towards the end of the Counsels' seat, and of the Solicitors' seat. At the farther end of the Counsels' seat, or near the end of it, Mr. Fergusson was sitting, to the best of my recollection.

Q. Had he a stick in his hand?

A. No stick that I saw.

Q. Had you your eye upon him; and if he had, must you have seen him?

A. He is an acquaintance of mine, and he was in his professional dress; and if he had, I think I could not have mistaken it: Lord Thanet was sitting upon the Solicitors' bench, almost immediately behind Mr. Fergusson. By this time the confusion had become general, and a number of people had got upon the table, from all parts of the Court.

Q. Whether, if Mr. Fergusson had brandished a stick, or presented it to Rivett, must you have seen it?

A. I certainly must.

Q. I need not ask you if you did see it?

A. I did not see it; Mr. Fergusson had risen up, and Lord Thanet had risen up.

Q. Supposing it possible that a stick had been in Mr. Fergusson's hands, and it had escaped your eye, do you think it possible, from time and place, that Rivett could have wrenched it out of his hands before he attacked Lord Thanet?

A. I do not think it possible he could have a stick of any sort.

Q. Was Lord Thanet nearer to Rivett than Mr. Fergusson?

A. I think he was rather; one of the officers, but I do not know which, I do not know their persons, pressed very rudely, as it appeared to me, upon Mr. Fergusson; I believe that Mr. Fergusson might shake his shoulder when he felt the man's hand upon it; that is all the resistance I saw made on the part of Mr. Fergusson.

Q. What did you see pass between these officers and Lord Thanet?

A. The first thing I observed particularly of Lord Thanet was, that he was lying almost down upon his back upon the table, with a small stick or cane, which he held in both hands over his head or face, in this manner: one of the officers was striking him with a stick, and Lord Thanet endeavoured, with very little success, to defend himself by the use of this stick, which he held in both his hands.

Q. Now, before that period of which you last spoke, did you observe

observe Lord Thanet give a blow, or any provocation, to this officer?

A. I never saw him give a blow; I never saw him give any provocation; I never saw him in any other way than I have mentioned, till he left his seat; how he left his seat I cannot tell; they had risen up upon their seats; when they were pressed upon, they rose towards the left hand side of the prisoner, as the prisoner faced the Judges.

Q. Did they go out of sight?

A. No.

Q. Did they go off that table?

A. They were not upon that table; Mr. Fergusson was upon the table afterwards, but not on the table at any time that I have yet spoke to—Lord Thanet was then lying upon the table. I am not able to say how Lord Thanet got from that situation; I do not know that I took particular notice of what passed after, with respect to Lord Thanet; Mr. O'Connor was brought into Court, and then the riot ceased.

Q. Did you take any particular notice of Mr. Fergusson, between the last time you have been speaking of, and the time of Mr. O'Connor being brought into Court?

A. No: I do not recollect any thing more.

Q. I need not ask you if you saw Mr. Fergusson brandish a sword?

A. No.

Q. Did you see Mr. Fergusson after the sentence of death was passed, go back to his old place?

A. I did not.

Q. Were your eyes fixed upon that part of the Court?

A. They were, most particularly: I was placed in a situation in which I could very well see.

Q. So that it was impossible for Mr. Fergusson to have gone backwards from his seat, without having struck your eye?

A. I think it was impossible.

Q. Did you see Mr. Fergusson upon the table, before Lord Thanet was beat by Rivett?

A. I did not.

Mr. Justice Lawrence—In what part of the Court was you?

A. Under the witness-box; I rose from thence, and got upon the table as other people did.

Mr. Mackintosh—Did you see Lord Thanet or Mr. Fergusson take any part in any thing that had the appearance of disturbance or riot?

A. No; I did not. I saw Lord Thanet defend himself; and I have stated, that I did not see Mr. Fergusson do any act at all, except shaking that man's hand off his shoulder.

Q. Do

Q. Do you remember Mr. Dallas quitting his place before he began to address the Jury ?

A. I do, perfectly.

Q. And Mr. Plumer also, I believe ?

A. I do not.

Q. Do you recollect Mr. Fergusson leaving his own place, in consequence of that ?

A. I am rather inclined to think it was so ; but I cannot swear to that.

Q. I understand you to swear most positively that Mr. Fergusson never interposed between the jailor and Mr. O'Connor ?

A. I do most positively swear I do not think he did, and if he had, I think I must have seen it.

Cross-examined by Mr. Garrow.

Q. The dock or bar, by which the Bow-street officers were placed, could only occupy five or six persons ?

A. No more.

Q. Only the jailor and the prisoners ?

A. It might be three yards long, perhaps.

Q. You stated that after the sentence of death had been passed, and Mr. O'Connor had been left upon the floor, the officer pressed forward to apprehend him—What induced you to think these were officers rushing forwards for that purpose ?

A. I took them to be the persons who had produced the warrant in Court. When they had forced themselves up to the end of the Solicitors' seat, Mr. Fergusson said, I think, " here are two men obtruding themselves between the prisoners and the jury." Mr. Justice Buller said, " What are you about ; sit down ;" and one of them produced a paper, saying either that it was a warrant to take up Mr. O'Connor, or a warrant upon a charge of high treason against Mr. O'Connor, or something to that effect ; and therefore I supposed them to be Bow-street officers, or officers of justice.

Q. I do not know whether you happened to be present in Court when those two witnesses were examined as witnesses to prove the fact of apprehending Mr. O'Connor at Margate ?

A. I should suppose I was in Court, but I am not certain.

Q. But before the judgment of death was passed, it is perfectly in your recollection, that one of those persons had hinted in Court, that they had a warrant for the purpose of apprehending Mr. O'Connor ?

A. That was after the jury had returned their verdict, and before that verdict was pronounced.

Q. Do you know Mr. O'Brien ?

A. I saw him the other day for the first time in my life.

Q. You did not know him at Maidstone ?

A. No ; I did not.

Mr. Maxwell sworn, examined by Mr. Erskine.

Q. Was you in Court, at Maidstone, during any part of the trial of Mr. O'Connor and others?

A. I was, frequently.

Q. Did you hear Mr. Justice Buller pronounce sentence of death upon O'Coigly?

A. I did.

Q. In what part of the Court was you at that time?

A. At that time I was immediately to the left of the witness-box, rather farther from the Judge than the witness-box.

Q. Was you elevated above the Court?

A. I was elevated above the table where the Counsel sat.

Q. Did that elevation and position give you a view of that part of the Court where the Bow-street officers entered, and where the Solicitors for the prisoner sat?

A. That gave me a distinct view of that part of the Court.

Q. Do you remember when Mr. Justice Buller had finished pronouncing sentence upon Mr. O'Coigly—do you remember any persons rushing forwards, as if to seize Mr. O'Connor?

A. I remember some of the Bow-street officers, among whom I knew Rivett and Fugion, rushed violently to that place where Mr. O'Connor was.

Q. At the time that those two persons, Rivett and Fugion, rushed forwards in the direction you have described, did you observe where Lord Thanet was?

A. I did; my Lord Thanet sat at that time in the Solicitors' place.

Q. Did you observe where Mr. Fergusson was at the same time?

A. Mr. Fergusson sat in his own place, where he had been as Counsel for some time, on the bench before the Solicitors' bench.

Q. Which of them was nearer to that side of the Court where the jury-box is, and where Mr. O'Connor was?

A. I think Lord Thanet was rather, perhaps, the nearest of the two; but there was very little difference.

Q. Did you see any thing pass between Rivett the officer, and Lord Thanet?

A. I did.

Q. Describe to my Lord and the Jury what you saw?

A. After Rivett had forcibly overturned and driven from their places those who stood between him and Mr. O'Connor, he got to Lord Thanet, who was one of the nearest. Lord Thanet, when he was pressed upon, got out of the place where he was, and went from the scene of tumult towards the table.

Q. Was that farther from the prisoners than he was before?

A. Con-

A. Considerably farther from the prisoners than when he was first pressed upon.

Q. When Lord Thanet retired in that manner out of the Solicitors' box, over towards the Counsels' table, did Rivett pursue his course on towards the prisoners in the line of the Solicitors' box, or what?

A. He followed Lord Thanet, and struck him repeatedly.

Q. Had Lord Thanet struck Rivett before he went over from the Solicitor's seat towards the table?

A. Lord Thanet never struck Rivett before nor after that.

Q. Had you such a view of the situation in which Lord Thanet was placed, and what he did, as to swear merely to your opinion and belief, or do you swear it positively?

A. I had such a view, that I swear it positively: by that time I had quitted the place where I was, and got nearer to Lord Thanet and the other persons who were struck.

Q. Were any other persons struck besides Lord Thanet?

A. I saw several blows given, but I cannot say to whom, by the Bow-street officers and those who followed them.

Q. Do you know whether Rivett struck any person besides Lord Thanet?

A. I do not positively know whether he struck any person or not.

Q. But you swear positively Lord Thanet did not strike Rivett at all?

A. He did not; but merely put himself in a posture of defence and lying back upon the table.

Q. Had Lord Thanet a stick?

A. He had a small stick; which he held up over his head to defend himself; he was leaning back upon the table, an attitude in which it would have been difficult to have acted offensively.

Q. Did you see Lord Thanet subsequent to the time that he was in that situation?

A. I did.

Q. You say that the officers, and particularly Rivett, rushed into the Court, and having passed, one or two that were before Lord Thanet attacked Lord Thanet; what length of time might elapse between Rivett first rushing in and the time he struck Lord Thanet?

A. A very short space of time indeed.

Q. Was it possible that before Rivett struck Lord Thanet he could have gone within the Counsels' place, where you have described Mr. Fergusson to be, and have wrested a stick out of his hand before he came to Lord Thanet?

A. Rivett did not go to take a stick out of his hand, for he had no stick in his hand; he did not go up to Mr. Fergusson, but immediately went up to Lord Thanet and struck him.

Q. If

Q. If Rivett should have said here, that he never saw Lord Thanet till after he had taken a stick from Mr. Fergusson, from what you observed is that true or false?

A. I should certainly say it were false, without any hesitation.

Q. During the time that you thus observed Lord Thanet in the attitude of defence, retreating from the scene of tumult, and pursued by Rivett, where was Mr. Fergusson?

A. He was in his place, and remained in his place till he was pressed upon, and then he got out of the scene of tumult upon the table.

Q. Did you see him while he was in his seat, and did you see him move from his seat to the table by the pressure that was upon him?

A. I did.

Q. If, whilst Mr. Fergusson was in his seat, or if while he was pressed upon when he rose from his seat, if in either of these situations he had not only had a stick but had brandished and flourished that stick, I ask, must you have seen it or not?

A. I must have seen it; he was so directly before me, that it is quite impossible but I should have seen it; I CAN SWEAR THAT MR. FERGUSSON HAD NOTHING IN HIS HAND, BUT A ROLL OF PAPER IN HIS RIGHT HAND.

Q. And was in his professional dress?

A. He was.

Q. If Mr. Fergusson had done any one act to encourage the tumult that was undoubtedly then existing, or done any one act inconsistent with his duty as Counsel, or committed any one act of indecency or turbulence, must you have seen it?

A. I must.

Q. Then let me ask you, upon your solemn oath, did he do any such thing?

A. He did not: on the contrary, he endeavoured to keep quiet in the Court, by admonishing the people in Court to be quiet. Mr. Fergusson said particularly to Rivett, when he was striking Lord Thanet—do you know who you are striking; that is not a person likely to begin a riot.

Q. Did you see where Mr. Fergusson went to after he was upon the table?

A. He got upon the table, and got farther from the scene of tumult; and I do not know whether he sat down upon the table or not; he went towards the Crown Lawyers.

Q. Did you see Sir Francis Burdett?

A. I did. He at first stood by me in the witness-box, and when the confusion began he got nearer to the place of confusion at the same time that I did. I saw Mr. Fergusson remove Sir Francis Burdett from the scene of confusion, and put him farther from it.

Q. And

Q. And you saw him also place himself at a distance from it?

A. Yes.

Q. Did you afterwards see him go upon the table towards the Judges?

A. I did; I saw him till all the violence was over.

Q. Then can you take upon you to swear positively that neither Mr. Fergusson nor Lord Thanet, during the tumult, went towards Mr. O'Connor?

A. They went in a directly opposite direction.

Q. Do you swear that from your own opinion and belief, or from certain knowledge?

A. I swear it positively from certain knowledge.

Cross-examined by Mr. Adam.

Q. You saw Rivett and Fugion pressing forward?

A. I did.

Q. Did you know them before?

A. I knew them from having seen them examined in Court upon that trial.

Q. Only from that circumstance?

A. Only from that circumstance.

Q. During this affray you shifted your situation to another part of the Court?

A. Yes; I got upon the table.

Q. And you say you saw Sir Francis Burdett shift his place?

A. He shifted his place at the same time.

Q. From what part of the Court did he come?

A. From the witness-box; he stood on my right hand.

Q. To what part of the Court did he go?

A. He also went on to the table.

Q. Do you mean that he remained upon the table?

A. I cannot say whether he remained upon the table, but he went there with me.

Q. Did he remain on the table any considerable time?

A. The tumult was over very soon after that.

Q. The Counsel for the Crown sat immediately under the witness-box?

A. They sat on the same side.

Q. Round the angle?

A. Yes.

Q. Therefore it was necessary when you and Sir Francis Burdett shifted your places, that you should go over the heads of the Counsel for the Crown, to get to the table?

A. Exactly so; we jumped from the neighbourhood of the witness-box.

Q. Do you remember when Sir Francis Burdett jumped from the

the neighbourhood of the witness-box to the table, did he not jump immediately from the table into the crowd ?

A. I cannot say whether he did or not ; but I saw him standing upon the side of the table, or sitting upon the side of the table, till Mr. Fergusson removed him.

Q. But that was near the conclusion of the affray ?

A. It was.

Q. What circumstance was it that brought you to Maidstone ?

A. Merely to be present at the trials.

Mr. Erskine. You are a gentleman possessing an estate in Scotland ?

A. Yes.

Q. And I believe married a daughter of Mr. Bouverie ?

A. Yes.

Lord Kenyon. Did you see Mr. O'Connor go out of the dock ?

A. Yes.

Q. How soon was he out of your sight ?

A. I do not know that he was out of my sight.

Q. Do you know the situation of the wicket ?

A. Yes.

Q. Where were Mr. Fergusson and Lord Thanet during the time that elapsed between his leaving the bar and being brought back again ?

A. Upon the table.

Q. Did the crowd coming upon them prevent you from seeing them ?

A. No : I was so situated that I saw them both distinctly ; I was a great deal higher than they.

Samuel Whitbread, Esq. sworn, examined by Mr. Gibbs.

Q. You was present, I believe, at the time of this trial ?

A. I was in Court the latter part of it, after I had been examined as a witness.

Q. In what part of the Court were you ?

A. After having been examined as a witness I retired out of the witness-box, behind, and came into the Court again.

Q. Whereabouts was you when the verdict was brought in ?

A. Considerably behind the witness-box.

Q. Had you from thence a perfect view of the Court ?

A. Of the lower part of the Court.

Q. Had you a perfect view of the dock in which the prisoners were, the Solicitors' seat, and the seat where the Counsel sat.

A. I had certainly a view of the whole of that part of the Court.

Q. Between the verdict and the sentence we understand some Bow-street people came in and spoke of a warrant ?

A. There

A. There was some tumult, and that subsided upon Mr. Fergusson calling the attention of the Court to the cause of it. He waved his hand and spoke to them; he then turned to the Bench, and said, "My Lord," or some such word, just to draw the attention of the Court: upon that, Rivett, whom I knew before, said he had a warrant against Mr. O'Connor, and he thought he was going to escape. Mr. Justice Buller then said, "Patience," or some such word; and then sentence was pronounced.

Q. After sentence was pronounced, did you observe O'Connor?

A. I observed him put his foot upon the front part of the dock, and get out of the dock: having carried my eye after him some time, my eye returned to the bar, and there I saw Rivett violently attacking Lord Thanet; he had a stick in his hand: I did not see him strike a single blow; I saw many blows struck at him, and he was endeavouring to ward them off.

Q. Did it appear to you that Lord Thanet made any attack upon Rivett to provoke this?

A. No; on the contrary, he was defending himself against a violent attack of Rivett's upon him.

Q. Where was Lord Thanet at the time that you observed this?

A. I think he was close to the table, leaning back upon the table in the act of defending himself, with his hands up, in which I think he had a stick.

Q. Did you see at this time where Mr. Fergusson was?

A. I did not observe Mr. Fergusson at that time: before the tumult had quite subsided I observed Mr. Fergusson upon the table, not far from the judges.

Q. Had you your eye upon Lord Thanet from the time you saw Rivett striking him in this way?

A. No, I had not, because there was a great deal of tumult behind, and of persons trying to get out at the door behind the Bench, and the bailiffs resisting their attempts, which engaged my attention some time.

Q. Did you see Mr. O'Brien during this time?

A. I do not recollect that I did.

Q. Did you know Mr. O'Brien well?

A. I knew him perfectly by sight.

Q. If he had been acting in this scene must you have noticed it?

A. In a scene of confusion many things must have escaped the observation of every person; but I think it is more than probable that I must have seen such a person as Mr. O'Brien, if he had been active.

Cross-examined by Mr. Attorney-General.

Q. How long did you remain at Maidstone ?

A. The next morning, I think, I passed you on the road to London.

Q. *Mr. Attorney-General.* I beg your pardon, I did not recollect that circumstance.

Q. Previous to the officer's approaching the place where Mr. O'Connor was, had you heard that there was to be a rescue ?

A. I had not.

Richard Brinsley Sheridan, Esq. sworn, examined by Mr. Erskine.

Q. You was subpoena'd as a witness to attend the trials at Maidstone ?

A. I was.

Q. Was you in Court at the time when the Jury retired to consider of their verdict, and also when they returned with it ?

A. I was.

Q. And during the remaining part of the time till the tumult ceased ?

A. During the whole of that time.

Q. In what part of the Court was you when the Jury brought in their verdict ?

A. Sitting with Sir Francis Burdett in the witness-box ; that box was raised very considerably above the table, so that I had a direct view of every thing passing in the Court.

Q. Had you then an opportunity of perfectly observing the place where the Solicitors sat, and the dock where the prisoner's were, and the place where the Counsel were ?

A. A most perfect opportunity, without being in the least annoyed or mixed with the tumult.

Q. Do you remember the jailor laying hold of Mr. O'Connor ; perhaps you did not see that ?

A. The first that I observed of the tumult was prior to the sentence being passed upon O'Coigly ; I did not see Mr. O'Connor make an attempt to go, but I had observed to the High Sheriff that I fancied he would come out, for that I had observed at the Old-Bailey, that they had left the bar immediately upon the Jury pronouncing them not guilty. The riot then commenced, and I observed some men pressing very violently towards the box where Mr. O'Connor was ; my attention was taken up with that : Mr. Fergusson then appealed to the Court, and said, " Here are two riotous fellows," or something of that sort, " disturbing the peace of the Court." Rivett then said, " I have a warrant to apprehend Mr. O'Connor."

O'Connor." Mr. Justice Buller desired him to be quiet, and then put on his cap to pass sentence, and every thing subsided.

Q. After that did you observe the Bow-street-officers rushing in, in the way that we have heard?

A. The first thing I saw was Mr. O'Connor getting very nimbly over the front of the dock, and going towards the narrow street, and these men rushing after him. Certainly the man who could have thrown himself most in the way of the men was Mr. O'Brien, if he had chosen to do it.

Q. Are you acquainted with Mr. O'Brien?

A. I know him intimately.

Q. Is he a strong man?

A. Certainly he is.

Q. If Mr. O'Brien had been desirous of opposing himself to the officers and prevent them from going after him, he might?

A. He was precisely in the best situation to have done it.

Q. Had you an opportunity of seeing whether he did or not?

A. He did not, and I am sure he was not there in the subsequent part of the tumult.

Q. Can you take upon yourself to swear positively that he gave no manner of assistance?

A. Positively.

Q. And Mr. O'Brien had an opportunity of affording the most essential means of escape to Mr. O'Connor, if he had chosen?

A. I think the whole idea was folly and madness, and that no assistance could have effected it.

Q. But Mr. O'Brien did the contrary?

A. Yes; he retired behind the box, and I did not see him afterwards. I was very attentive to the whole of it, and was making my observations with the High Sheriff, who more than once endeavoured to persuade me to leave the witness-box and endeavour to quell it.

Q. Did you see Lord Thanet at the time the officers rushed in?

A. I did not see him till the time he was struck; I saw him struck.

Q. Did he return the blow, or shew any thing like activity or a disposition to activity?

A. I saw him when he was first pressed upon. It was not a tumult merely near the dock, but the whole Court was a scene of general tumult and a scene of panic, and certainly with the least reason—there was a tumult behind us in the witness-box; there was a general calling-out not to open the doors, some calling out for soldiers and constables, and there did appear to me a sincere panic and apprehension that there was a planned rescue. I perceived plainly there was no such thing, and endeavoured

all

all I could to persuade them so. The officers were beating down every body, forcing their way and pressing upon every body. Lord Thanet had a stick in his hand with which he was parrying the blows which came amazingly quick; it seemed to me an incredible thing that he was not extremely hurt, and he never returned a blow, but retired from the scene of tumult farther into the Court away from the prisoners; Sir Francis Burdett was with me, and by this time Mr. O'Connor was stopped and they were bringing him back again; he had attempted to go towards the gate with the wicker, and I observed every body to put up their hands and stop him; he might as well have attempted to get through a stone wall; if there had been six or eight persons there who were so disposed, he might perhaps have got as far as the door, but he could not possibly have got farther. I then saw a person upon the table brandishing Mr. O'Connor's scymetar over the heads of the people; he seemed very much alarmed and not knowing what he was about; I am sure it must have gone very near several person's heads, it seemed quite miraculous that he did not do some mischief; in short, it was difficult to discover whether he meant to keep the peace or break the peace. Sir Francis Burdett saw that they had collared Mr. O'Connor, was frightened, and said with great agitation to me, that they would kill O'Connor, and he jumped over the railing; he could not go from where we were without jumping upon the table, and he ran forward; Mr. Maxwell followed him or went at the same time; they both went towards Mr. O'Connor; I then saw very distinctly Mr. Fergusson stop Sir Francis Burdett, and use some action, saying, "You had better keep away and not come into the tumult at all:" I could not hear what he said, but it appeared so to me.

Q. Did you see Mr. Fergusson from the beginning of this scene, when sentence of death was pronouncing?

A. I saw him plainly in his place, after the Judge had passed sentence of death.

Q. Did you see the crowd press upon Mr. Fergusson, and did you see him get upon the table?

A. I did not see him get upon the table; but as the crowd pressed upon him he was forced upon the table.

Q. Did Rivett attack Lord Thanet before he could possibly have attacked Mr. Fergusson, and wrenched a stick out of his hand?

A. He came immediately upon Lord Thanet, when the tumult began.

Q. He could have had no conflict with Mr. Fergusson till after the conflict with Lord Thanet?

A. Certainly not.

Q. Do you know Mr. Fergusson?

A. Per-

A. Perfectly.

Q. If he had been upon the table flourishing and waving a stick, in the manner that has been described, in his bar dress, must you not have seen it?

A. Yes: it must have been a most remarkable thing, indeed, for a Counsel in his bar dress to have a stick flourishing in his hand—HE HAD A ROLL OF PAPER IN HIS HAND.

Q. Does that enable you to swear that Mr. Fergusson was not in that situation?

A. Certainly.

Q. Do you think if he had taken such a part in the riot, in the presence of the Judges, that you must have observed it?

A. I must have observed it.

Q. Did Lord Thanet or Mr. Fergusson ever go nearer to Mr. O'Connor after he had jumped out of the dock, or did not Lord Thanet and Mr. Fergusson retire farther from the scene of tumult?

A. They certainly did:—Upon some farther conversation I got over this place myself, and went down, and the first thing I did was to speak to the man with the sword. I told him I thought he with his sword made half the riot himself; and he put it away. I passed Lord Thanet, who was so far from staying in the riot, that he went towards the Judges, as if he was going to make a complaint. I then went into the riot, and endeavoured to persuade them that there was no such thing as an attempt to rescue O'Connor; and a man that had hold of him, who knew me, said there was; and added, these fellows are come down from London; they are Corresponding Society people, and they are come down on purpose to rescue him. One person, in particular, called to them not to believe me, and I laid hold of him, and said he should go with me to Mr. Justice Buller: I insisted upon his name and address, and he would not give it me. I then turned to the Judges, and he ran away. So far was Lord Thanet from going towards the wicket, that I passed him going up to the Judges; and Mr. Fergusson remained with me, desiring them not to treat Mr. O'Connor so, and generally endeavouring to quiet them: the only moment they were out of my eye was while I was getting over this place.

Cross-examined by Mr. Law.

Q. You saw Lord Thanet distinctly from the time he was struck?

A. I do not mean with the stick;—I corrected that by saying, from the time he was assaulted and driven from the seat he was in at first.

Q. Can you take upon you to say whether he gave a blow before he was struck?

A. I

A. I said from the time he was pressed upon or assaulted ?

Q. You say you saw Lord Thanet going towards the Judges, as if he was going to complain, Did you hear him make any complaint to the Judges ?

A. I did not hear him, certainly.

Q. I will ask you, Whether you do or not believe that Lord Thanet and Mr. Fergusson meant to favour O'Connor's escape, upon your oath ?

A. Am I to give an answer to a question which amounts merely to opinion ?

Q. I ask, as an inference from their conduct, as it fell under your observation, Whether you think Lord Thanet or Mr. Fergusson, or either of them, meant to favour Mr. O'Connor's escape, upon your solemn oath ?

A. Upon my solemn oath I saw them do nothing that could be at all auxiliary to an escape.

Q. That is not an answer to my question ?

A. I do not wish to be understood to blink any question ; and if I had been standing there, and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question.

Q. My question is, Whether, from what you saw of the conduct of Lord Thanet and Mr. Fergusson, they did not mean to favour the escape of O'Connor, upon your solemn oath ?

A. The Learned Counsel need not remind me that I am upon my oath, I know as well as the Learned Counsel does, that I am upon my oath ; and I will say that I saw nothing that could be auxiliary to that escape.

Q. After what has passed, I am warranted in reminding the Honourable Gentleman that he is upon his oath—My question is, Whether from the conduct of Lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favour O'Connor's escape ?

A. I desire to know how far I am obliged to answer that question ? I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not think myself justified in saying that either of them did—Am I to say whether I think they would have been glad if he had escaped ? that is what you are pressing me for.

Q. No man can misunderstand me ; I ask, Whether, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe upon your oath that they meant to favour the escape of O'Connor ?

A. I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of O'Connor.

Q. I ask you again, Whether you believe, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, upon your oath, that they did not mean to favour the escape of O'Connor ?

A. I have answered it already.

Lord Kenyon—If you do not answer it, to be sure we must draw the natural inference.

Mr. Sheridan—I have no doubt that they *wished* he might escape ; but from any thing I saw them do, I have no right to conclude that they did.

Mr. Law—I will have an answer :—I ask you again, Whether, from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor ?

A. If the Learned Gentleman thinks he can entrap me, he will find himself mistaken.

Mr. Erskine---It is hardly a legal question.

Lord Kenyon—I think it is not an illegal question.

Mr. Law---I will repeat the question, Whether, from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor ?

A. My belief is that they *wished* him to escape ; but from any thing I saw of their conduct upon that occasion, I am not justified in saying so.

Q. I will ask you, Whether it was not previously intended that he should escape if possible ?

A. Certainly the contrary.

Q. Nor had you any intimation that it was intended to be attempted ?

A. Certainly the contrary. There was a loose rumour of another warrant, and that it was meant that he should be arrested again, which was afterwards contradicted. Then the question was mooted whether the writ could be issued before he was dismissed from custody ? Certainly there was no idea of a rescue. There was no friend of Mr. O'Connor's, I believe, but saw with regret any attempt on his part to leave the Court.

Q. From whom did you learn that there was such a warrant ?

A. It was a general rumour.

Q. From whom had you heard this rumour ?

A. I believe from Sir Francis Burdett ; but I cannot tell.

Q. At what time was that ?

A. About four or five o'clock.

Q. Have you ever said that the Defendants were very blameable ; Lord Thanet, Mr. Fergusson, or any of them ?

A. Certainly not.

Q. At no time since ?

A. Certainly never.

Mr. Erskine--- You were asked by Mr. Law, whether you believed that the Defendants wished, or meant, to favour the escape of Mr. O'Connor; I ask you, after what you have sworn, whether you believe these Gentlemen did any act to rescue Mr. O'Connor?

A. Certainly not; and I have stated upon my oath, that every man in the narrow gate-way endeavoured to stop him: I remarked it particularly; because, there being a common feeling among Englishmen, and he being acquitted, I thought they might form a plan to let him escape.

Q. You have stated that you saw no one act done or committed by any one of the Defendants, indicative of an intention to aid O'Connor's escape?

A. Certainly.

Q. I ASK YOU THEN, WHETHER YOU BELIEVE THEY DID TAKE ANY PART IN RESCUING MR. O'CONNOR?

A. CERTAINLY NOT.

End of the Evidence for the Defendants.

MR. ATTORNEY-GENERAL.

GENTLEMEN OF THE JURY,

At this late hour of the day, I do not think that the duty which I owe the public can require me to detain you any considerable time in reply to the observations of my Learned Friend.

Gentlemen, my Learned Friend has addressed you with great ability; and unquestionably with great but guarded zeal, on behalf of his clients;—this his duty called upon him to do; for certainly the best exertion of his great abilities was due to them. On the other hand, your attention is now to be occupied by a person who must address you upon principles which forbid him to have any zeal upon the subject.

The Attorney-General of the country, as it appears to me, has a public duty to execute, in reference to which he ought to conceive, that he has properly executed that duty, if he has brought a fit and proper accusation before a Jury, and has proceeded to the length of honestly and fairly examining the several

veral circumstances given in evidence in support of, and in answer to, that accusation: always recollecting that the Jury will finally hear, from that wisdom which cannot mislead them, the true inferences that will arise upon facts that have been given in evidence on both sides. They will hear it from a person unquestionably less prejudiced than I can be (though I have endeavoured as much as possible to guard myself against any prejudice), because it belongs to the mind of man to be influenced by circumstances, which one's duty as a prosecutor obliges one to look at a little anxiously.

Gentlemen, Having been charged with the duty of laying this important case before you, I have not the least doubt but you will discharge the duty which is now imposed upon you with a full and conscientious regard to justice; and I dismiss here all the observations my Learned Friend has made upon the high rank and situation of Lord Thanet, upon the respectable situation in his profession of Mr. Fergusson, and of the situation of Mr. O'Brien; because it is quite enough for me, according to my sense of duty, to say this, that, as a Jury sworn to make a true deliverance, you are not to convict any of them, whatever rank or situation belongs to them, unless you are conscientiously satisfied that they are guilty. You will deliver the same verdict that you would between the King and Defendants of any other description.

Gentlemen, What has fallen from the last witness obliges me to take the character of the proceeding which gives rise to the cause, from his friend; who, when he was addressing you, in the course of this afternoon, said, and truly said, that such a proceeding in a Court of Justice, which the last witness represented as an idle panic, most loudly called for the interposition of the law. That witness may have represented those transactions, as I have no doubt he did, as it seemed just to him to represent them. Certainly I was not personally present; but I was within hearing, and I can say that that Gentleman is a man of stronger nerves than any other man in this country, if the representation he has given of this scene is a true one. By a true one, I do not mean that it is not one that the Gentleman believes to be true; but the evidence of Mr. Justice Heath gives it a character which I believe every man in the county of Kent who was present would give it, namely, that it was a proceeding utterly inconsistent with the safe administration of justice; that it was attended with a degree of indecency and tumult that was never witnessed in a Court of Justice before, and I trust never will be witnessed in a Court of Justice again.

Gentlemen, Having no anxiety about the fate of this or any other cause, except so far as it is fit for me to have an anxiety founded upon the public interests, whenever this cause comes to

its conclusion, I think the Noble Peer, the Defendant, who holds a situation high in this country, ought to join with all his fellow-subjects, in thankfully acknowledging, that the Attorney-General, having reasonable accusing evidence to lay before a Jury (whether it is satisfactory to their minds, is another consideration), should shew to the country, that transactions of this sort shall not be carried on, without being brought under the notice of a Court of Justice.

Gentlemen, Accusations of all sorts are tried in this country with great propriety; but if you acquit a man of treason, is a man to start up and say, that the public are to be indignant, because another warrant has been issued against him? I remember in this very Court, in the last cause that was tried here at bar, my Lord exerted himself with great vigour, by taking immediate notice of such an insult as was then offered to the Court. My Learned Friend says, why did not the Judges, who were present, do their part, by taking notice of the fact at the moment? I will give the answer to that: The Judges of the country are but men. Although they are placed in high judicial and honourable situations, yet they are placed in situations in which they are to see that their conduct is not only the best that they can pursue, but, when they proceed to acts of punishment, that their conduct is perfectly adapted to the subject with which they are dealing. If the five Judges upon the Bench had seen this as an idle panic, perhaps those Judges would have treated it as an idle panic. But how does Mr. Justice Heath, upon whom my Learned Friend relies so much—how does he mention the scene that was passing? He says that he never witnessed such a scene before.—My Learned Friend says, I might have called another Learned Judge as a witness, but when I call witnesses who are above all suspicion, men as honourable as any men in this country, to state to you all that that Learned Judge would have had to state to you, I think I shall have acted neither unfitly for the public, or the Defendants. But with reference to that conversation (upon which I must farther observe by and by) that has been stated by Mr. Solicitor-General and by Mr. Abbott, to have passed between Mr. Justice Lawrence and Lord Thanet, I should be glad to know, what foundation there is for the reasoning of my Learned Friend, that Mr. Justice Lawrence ought to have committed or attached Lord Thanet. I think I am entitled, under the circumstances of the evidence in this case, to represent him as perfectly ignorant of those causes which occasioned so much confusion in the Court.

Mr. Erskine---I never meant to say so.

Mr. Attorney-General---My Learned Friend certainly did not state it exactly in these words; but he will, I am sure, excuse me for putting him in mind of the expression he made use of

of, and I shall now endeavour to repeat the very words he used, "Mr. Justice Lawrence, instead of asking Lord Thanet to "do him a kindness, should have attached him." My Learned Friend will not, I am sure, interrupt me again; for when I take notice of any thing that is said in so able a defence, I do not mean to lay it down that Counsel are to be responsible for every expression that hastily falls from them; but expressions may have an application which I feel it my duty to remove; and I only wish to set right one of the most respectable, and indeed all those respectable characters who presided on the Bench upon that day. I shall therefore say no more upon that subject.

Gentlemen, The question is now before you; and I am happy to have the testimony of my Learned Friend, that, taking this proceeding as a mere proceeding of accusation, it is a highly proper one; and when I state that, I mean to state merely the satisfaction I feel in the concurrence of his opinion with my own judgment.

Gentlemen, Having said thus much, give me leave to concur most fully in all that my Learned Friend says, with respect to the beneficial effects of a lenient administration of the law, but not so lenient as to make the law ineffectual.

Gentlemen, It was hinted to me, before my Learned Friend began his address to you, that, with respect to two of the Defendants, it might be consistent with the interests of justice, that the trial should end there; and why did I consent to that? There was evidence to go to the Jury, as against Mr. Thompson; I admit, not evidence to convict him, not evidence, perhaps, with respect to his identity—But with respect to Mr. Gunter Browne, there was much more considerable evidence to go to you, subject still to the question of identity—But I know this, that the great interests of public justice are better satisfied, by not pressing for conviction, even when you *can*, perhaps, obtain it, if you think there are doubts whether or not you *ought* to obtain it.

Gentlemen, Another circumstance is, that I thought it due particularly to one Defendant, with respect to whom I think this the clearest case, Mr. O'Brien. I wished to give him the benefit of Mr. Browne's and Mr. Thompson's evidence, if he thought proper to call them, with respect to some material circumstances.

Gentlemen, Attend to what I am now stating.—When Mr. Sheridan is asked, whether, from the circumstances that fell within his observation, he believes that Lord Thanet and Mr. Fergusson meant to favour the escape of Mr. O'Connor? he says: "From the facts that fell within my observation, I answer it in the negative." So I say in this case, it is not merely (for the rules of evidence permit one so to state), it is not merely from what *does* appear, that a Jury is to judge, but
also

also from that which does *not* appear. Now see what is the case on the part of the Crown, with respect to Mr. O'Brien? In the first place, you have the evidence of a most honourable person, Mr. Serjeant Shepherd.—My Learned Friend says, that, you, Gentlemen of the Jury, are not to attend to general questions, such as, “Did a person appear to do so and so?” but you are to have the facts as the grounds upon which that appearance is inferred. That proposition is to be carried this length, that as far as the nature of the transaction will admit, instead of giving the impression of your mind, as collected from the circumstances, you shall give the circumstances which have created that impression. I am sure his Lordship will remember, that in the case of Kyd Wake, who was tried for that detestable riot, with respect to the King's person, a question was put, “Did he appear to be active in the riot?” and the Jury concluded that which they did conclude, upon that circumstance; recollecting that the nature of the transaction was such, that they must be content with such an answer. And indeed my Learned Friends themselves put the question to Mr. Smith, and Mr. Warren, respectable witnesses unquestionably: “Did they (the Defendants) appear to encourage the riots?” But permit me to say, it did not rest so with Mr. Serjeant Shepherd; for he told you, he wished to give you the evidence upon which he formed his opinion.—Gentlemen, you will next observe, that, giving Lord Thanet all the benefit that might arise upon this statute of 14 Geo. III. (upon which I shall say a word by and by), can Mr. O'Brien alledge any thing of that kind? Rivett has told you distinctly (and so it turns out from Mr. Sheridan's evidence), that there was a rumour of a warrant, which created so much indignation; Mr. Sheridan admits, that there was that rumour, but Mr. O'Brien did not chuse to rely upon that; he wanted to know how the truth of the rumour was; and accordingly, in the presence of Mr. Thompson, a member of parliament, he did make inquiries of Rivett, and coming to him, as Rivett relates, he, Mr. O'Brien, proposed a bet; he says, that Mr. O'Brien then went back again to where Mr. O'Connor was: there was some conversation between them, and when the verdict is brought in Mr. O'Connor attempts to escape. Now, I ask you, as honest Jurymen, if this is not true, why is it not contradicted; and if it is true, is it possible to acquit Mr. O'Brien?

Now, with respect to the case of my Lord Thanet and the case of Mr. Fergusson, Gentlemen, I declare to you most solemnly, that I respect the high situation of the one, as I respect the professional situation of the other; but in this case, Gentlemen, the question, and the only question is, “Did they make a riot?” I desire that the question may be put upon its true merits. My Learned Friend says, “It is a most extraordinary thing, that in
such

such a case as this, stating that there was a general riot, we have not been able to fix the name of any other rioter with these five Defendants." Has my Learned Friend denied that this was a general riot? Has my Learned Friend denied that it was a very serious riot, affecting a great variety of persons? Now, though he is bound to admit the existence of a riot, my Learned Friend is just as much at a loss to find the names of the other persons as I am; and why? because the circumstances attending the transaction are such, that if you will not attend to the conduct of the few individuals who have been pointed out, it is not in the nature of things, that you should bring any man to punishment, in such a case. Then my Learned Friend says, "What motive could Lord Thanet have?" Mr. O'Connor, who has been represented as an extremely judicious man upon some occasions, was certainly so foolish, as to think such a project as this might have been practicable; but is it in fact imputed to these persons, that they meant to turn Mr. O'Connor loose, in order to subvert the constitution of this country (for so my Learned Friend states it)? and to do all this mischief which he is pleased to represent to you, must have been the consequence of Mr. O'Connor's escape. He seems to have forgot, that all I meant to impute (for ought I know, there may be men in the country who know more of it than I do), that all I am charging upon these Defendants, is, that they meant to rescue Mr. O'Connor from any farther demand that Justice might have upon him. Whether Mr. O'Connor was immediately to take himself out of this country, into a situation in which he could do no mischief, or whether he was to remain in this country to do mischief, is a question with which I have no business.—I have no necessity either to impute to the Noble Lord or the Learned Gentleman, any particular knowledge or intention upon that subject. Then my Learned Friend says, "Do you think persons in the situation in which these two Defendants are (I mean Lord Thanet and Mr. Fergusson), would further such a purpose as this?" Why, Gentlemen, if I am to give an answer to this question, I am bound (for I would not have brought this prosecution, if I had not thought it a fit question for the decision of a Jury) to speak out plainly upon the subject; and I say, fairly, that if any man had asked me before this trial was over, whether Mr. Fergusson and Lord Thanet, having heard the particulars of the evidence, would not have removed to situations where they could not have been implicated in this charge, I should have thought the imprudence of doing otherwise so great, that it could not have happened. Mr. Fergusson knew all the particulars of the evidence, and so did Lord Thanet, because he heard the evidence summed up, and I cannot help feeling here some degree of surprize, when the
question

question was put to me, upon what was probable or what was improbable, after hearing the evidence upon that Trial.

Gentlemen, That there was a riot, is clear beyond all doubt. Now let us see how it is occasioned:—Mr. O'Brien knew of this rumour, at the time the application was made to the Court, by Rivett and Fugion. He was aware, that Mr. O'Connor was not discharged. He learned, and Lord Thanet learned, and I believe nobody doubts the fact, that every body learned this circumstance, not only that he was not then to be discharged (with reference to which I am happy to find that my Learned Friend and I agree upon the point of law), not only that he was not then to be discharged, but it was publicly taught to every body in Court, what was the reason and what the cause for which his discharge was to be withheld from him. And here, without commenting upon that measure, which is supposed to have raised so much indignation, I take leave to say most confidently, that it does not belong to any person, of any rank or situation whatever, to interpose in the execution of a warrant, upon his notion whether the magistrate has acted right or wrong in granting it.—It is granted and must be acted upon.—If the magistrate has acted improperly, the law of the country is not so feeble, as not to be able to reach the misconduct of the magistrate. If every man is to judge in such a case, surely the country is in a situation most embarrassing, most difficult, and most awful; (for, remember, if men will take the law into their own hands where there are verdicts of Acquittal, they may where there are verdicts of Guilty). Well, then, the parties having distinctly learned, that there was a warrant, and having been authoritatively told, that this warrant having issued, Mr. O'Connor was not to be discharged, I shall call your attention to what I take to be the few circumstances that must decide this case:—Gentlemen, if you please I will put it so, not to give Rivett any credit, if, upon any other part of the case, he is contradicted; but I should do that with great reluctance, till I am satisfied that he is not worthy of credit. But I will say this, that you may reject the whole of the evidence of Rivett, with respect to Lord Thanet and Mr. Fergusson, out of the case, and say, whether out of the negative evidence given on the other side, you can get rid of the facts sworn and deposed to by persons whose characters are out of the reach of the breath of suspicion.

In the first place, with respect to the evidence of somebody, whose name I forget, upon the trial at Maidstone, a witness was asked, whether Mr. O'Connor wished to favour an invasion of Ireland? he said, Quite the contrary.—So here, a witness when he was asked, whether Mr. Fergusson appeared to be favourable to this rescue, he said, "Quite the contrary." This was a much stronger negation than that of the Maidstone witness;

witness ; but upon being asked, what was the circumstance from which he inferred, that Mr. Fergusson's demeanour was quite the contrary ? he says, he complained of the Bow-street officers' coming forward.—Now, Mr. Fergusson must have known them to be Bow-street officers, because he was present when they were examined ; and being a gentleman who wears the robe that I wear, he could not but understand ; that they were not to be disturbed, *because* they were officers.—The great proof of his demeanour then being quite the contrary, is, that he makes a complaint of these persons standing between the Prisoner and the Jury ; whether the fact was so, or not, I do not know.—Mr. Garrow says, he apprehends, from the state of the Court, it could not be at that period of the trial. Then what is the answer to that ? I will put it in plain intelligible words :—If Mr. Fergusson had been misled, by reading the statute 14 Geo. III. which says, “ that gaolers shall not detain prisoners for their fees, but that they shall be discharged ;” if he had not found out the difference between a verdict of Not Guilty, and that judgment which authorizes a man to go without paying his fees ; if it had not occurred to him, that, when this discharge is given, detainers may be lodged in civil suits, or for other felonies, I hope in God we are not so revolutionized as to contend, that a man shall not be charged with two treasons, as well as with two felonies. Upon Mr. Fergusson being told, that there was this warrant (the warrant being publicly exhibited), it is not for me to examine, what it became Mr. Fergusson to do, because of that he is himself the judge. But I say, if, after he was apprized of that, he took any part, not by positive actual conduct, but by encouragement, capable of being exhibited to the understandings, and impressed upon the minds of the Jury, as such (however differently persons may tell their stories, with reference to certain facts, in which they do not agree, however strongly individuals may speak with respect to facts that they did not observe, however negatively they may say they did not see this or that, and they do not think it possible, and so forth) ; if there are positive circumstances sworn, which amount to acts of encouragement, which a Jury can feel and act upon, they must look to that positive evidence ; and if, in this case, Gentlemen, you find that positive evidence existing, however unwilling you may be to find such a verdict, you are sworn, upon your oaths, to give a verdict according to law ; and you must find a verdict therefore in support of this information.

Gentlemen, I will not go into a detail of the evidence, which you will hear from his Lordship ; but with reference to Lord Thanet and Mr. Fergusson, I cannot part with the evidence given by Mr. Solicitor-General ; but I shall first make this observation upon the evidence of Mr. Serjeant Shepherd,

to whose credit, honour, and accuracy, we all do justice, that where that evidence presses upon Mr. O'Brien, he says, that "Mr. O'Brien having turned round and looked up at Mr. O'Connor, it made an impression upon his mind;" and also that, "as far as he observed, Lord Thanet was defending himself." He judges therefore of appearances, both with reference to Lord Thanet and with reference to Mr. O'Brien; and what he says of the appearances with reference to Mr. O'Brien certainly throws a great degree of credit upon his accuracy when he speaks with respect to Lord Thanet. The same credit is due, I take it, to Mr. Solicitor-General: and you will have the goodness also to attend to the evidence of Mr. Hussey; for if you believe what he states, that when the man was pressing forward to execute the warrant, Lord Thanet inclined towards the bar, and put his person in the way; if that fact is proved to your satisfaction, Lord Thanet is guilty upon this Record. And if other facts are proved against Lord Thanet, and similar facts are proved against Mr. Fergusson, you must decide upon all the evidence, and not from what other men did *not* see or observe; you are not to decide upon the eloquence of my Learned Friend, but upon the oaths of persons who depose positively to facts. Then my Learned Friend made an observation upon the evidence of Mr. Solicitor-General, with reference to whom, as a moral character, I say nothing, because he is above all praise that I can bestow upon him: I have no doubt that it was an extremely painful thing for him to give his evidence this day; but his evidence is extremely material, because he speaks to the circumstance of Mr. Fergusson crying out that Mr. O'Connor was discharged. He tells you the pains he took with his brother in the profession to tell him that he was not discharged; and he speaks to the warrant being produced, and therefore there was a public notice, that there were further demands of justice upon Mr. O'Connor. He states upon his oath, that he did most distinctly and cautiously attend to the conduct of Mr. Fergusson and Mr. O'Connor; and then he says this: "I fixed my eye upon O'Connor, and I observed Mr. Fergusson, and other persons whom I did not know, encouraging Mr. O'Connor to go over the bar." Encouraging is a general word undoubtedly; but it is a word which expresses the impression which facts falling under his eye had made upon his mind; and when he was asked what he meant by encouragement? he describes it to have been by his actions. But he not only gives his evidence in this way as to that particular fact, but he gives it also with a caution, which entitles it to the same degree of credit which Mr. Serjeant Shepherd's evidence derives from its accuracy; for when he comes to speak of a circumstance, with reference to which he is not certain, he tells you, "Mr.

“ O’Connor jumped over the bar, and Mr. Fergusson turned “ himself round and appeared to me to follow Mr. O’Connor ; “ but I cannot say that he did.” He qualifies that apprehension in his mind, by telling you that he may be mistaken, and then he gives you the reason why he doubts whether that apprehension was or was not justly founded ; and he finally states in his evidence a circumstance respecting Lord Thanet, which I think will deserve a great deal of your consideration. Gentlemen, a Learned Friend of mine behind me, Mr. Abbott, has told you, that he heard Lord Thanet express himself in the manner which he has described, and I trust I shall not be told that the manner of an expression is not evidence of the import of the mind of the man from whose mouth the expression flows. He states to you the circumstance of Mr. Sheridan’s conversation with the Learned Judge, and he was struck with the extreme difference of the manner in which Mr. Sheridan expressed himself to that Learned Judge, from the manner in which Lord Thanet expressed himself. Am I to be surprized that Lord Thanet could be engaged in such a project, if I can believe, that he, a Peer of the Realm, made use of such language to a Judge of the Country, that “ he thought it fair that he “ (the prisoner) should have a run for it ?”—a run, for what ; Why, a run to elude justice !—a run to get out of the hands of a Court of Justice—a run to prevent being brought to justice ; and this is the sentiment of a Peer of the Realm—“ he thought “ it fair to have a run for it. And, considering it to be fair, he acted upon that apprehension, as far as he had the power of acting. This is a circumstance requiring your anxious consideration. Whether this Noble Peer struck Rivett first, which I do not find Rivett say that he did, is of no importance. These men have a certain temper and degree of spirit about them, which might perhaps induce them to thrash a Peer more than any body else, if they felt themselves ill-treated ; but Mr. Rivett may take this advice of me—I hope, in future, he will not use such treatment if he can avoid it. But what presses upon my mind is, that if Lord Thanet, treated in the manner he was by Rivett, had no connection with this project of rescue ; if he had not, either from the circumstances that fell under Mr. Sheridan’s observation, or from other circumstances, manifested that he meant there should be a rescue, is it the conduct of a man of considerable situation—is it the conduct of a man of common sense, instead of making a serious complaint upon the subject, instead of stating, as he naturally would have done, “ this project of rescuing a man from the “ hands of justice, is that species of project, which, in my “ situation, it must be known I must feel to be inconsistent “ with propriety, duty, and honour, to have embarked in ?” On the contrary, he is perfectly neutral ; no complaint is made

upon the subject. It appears to me, that if I had been struck two or three times by that officer, the manner in which I would have acted upon that occasion would certainly not have been to have immediately stated that "it was fair the prisoner should have a run for it," but to have made some application to have those punished of whose conduct I had a right to complain. Now, this evidence of the Solicitor-General is also confirmed by Mr. Abbott, and by Mr. Serjeant Shepherd, who states to you what Lord Thanet did; and he states it to you, that he was not holding up his hands for the purpose of rescuing himself from the pressure of the mob, but was holding up his hands to defend himself against those persons who were pursuing Mr. O'Connor; and he gives his evidence in such a way, that you can have no doubt as to the personal conduct of Lord Thanet. Then when you have heard this evidence on the part of the prosecution, I mean the evidence that goes to positive facts, it will be for you to decide whether they are not all reconcileable with the negative evidence given on the part of the Defendants. I have not gone into the whole of the evidence, because I feel that my Lord has a painful and an anxious duty to perform, and whatever your verdict may be, I am confident and sure that this prosecution will have been very beneficial to the country. I hope and trust that I shall never see such another; but whenever I see an occasion which calls for it, whilst I hold the situation which I have the honour to fill, I will not fail to institute it.

Gentlemen, having said thus much, and having endeavoured to discharge myself of my duty, you will be good enough to say what is due as between the Public and the Defendants,

LORD KENTON'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY,

IF I could, consistently with my own sense of my duty, or consistently with the public expectations—consistently with the expectations of the Bar on the one side and the other, and with your expectations—I could relieve myself from going through, in detail, all the particulars of this case, after considerable bodily and mental exertions already, I should certainly

tainly save myself from a great deal of trouble. But I will not shrink from the discharge of my duty, though it may be attended with labour and pain.

This is a case of the first importance. I do not remember any case that ever happened in my time, in the shape of a misdemeanour, of more importance to the Public: and it has been conducted in the most solemn manner. It is brought before the whole Court, assisted by a Jury of Gentlemen from the county of Kent, taken from the highest orders of the people, and whose educations and stations in the world qualify them to decide causes of such importance. It is usual, in causes of this kind, where there is a number of Defendants, and where the evidence does not extend sufficiently to them all, to submit to the Jury, before the end of the cause, whether those upon whom the evidence does not attach, ought not to be acquitted, in order that the other Defendants may avail themselves of their evidence, if they shall think proper. It was with a view to that very state of the question that I took the liberty to submit to you, that two of the Defendants ought to be acquitted before the other Defendants produced their evidence; and I did it with a view that the others might, if they thought fit, appeal to their evidence, to shew, on the rest of the case, what the real state and justice of it was.

In dispensing the criminal justice of the country, we have sometimes an arduous task to perform. It is not a pleasant thing, most certainly, to condemn any one of our fellow-creatures to punishment: but those who are entrusted with the administration of the criminal justice of a country, must summon up their fortitude, and render justice to the Public, as well as justice tempered with mercy to the individual. I have the authority of Lord Hale, one of the greatest and best men that ever lived, for saying, that Juries are not to overlook the evidence—that they are not to forget the truth, and to give way to false mercy; but, without looking to the right hand or the left, they are to weigh the evidence on both sides, and then, according to the best of their judgment and understanding, to do justice to the Public, as well as to the Defendants.

Before I proceed to sum up the evidence, I shall only make one other observation, which was made by Mr. Whitbread in giving his evidence, the tone of whose voice I never heard before. Having gone through his evidence, he gave us this *legacy*, as a clue to direct us in the decision of this case—"that, "in a scene of so much confusion, there are many things which "must escape the observation of every individual." Having stated thus much to you, I will now proceed to sum up the evidence; and when I have done that, I shall make some few observations on it. [*His Lordship here summed up the evidence on both sides, and then proceeded as follows:*]

I now

I now proceed to make a few observations of my own. There is no occasion to give you my authority, or the authority of those who hear me, upon this point.—There is no doubt that the prisoner was not entitled to be discharged; for, when a verdict of acquittal is entered, a Judge may order a party to be detained, and compel him to answer other charges that may have been brought against him. On this point there is no difference of opinion; it is not even disputed at the Bar: the case is clear; and there is no doubt upon earth that a prisoner, in many cases, though he may be acquitted, as in the case of an appeal of murder, cannot be discharged though he be acquitted of the murder.

I have stated the evidence on the one side and the other; and although there is strong contradictory evidence, yet I think there is a great deal of evidence which goes in support of the charge. There were some observations made by the Learned Counsel for the Defendants, which perhaps were not altogether warranted. Counsel are frequently induced, and they are justified in taking the most favourable view of their client's case; and it is not unfair to pass over any piece of evidence they find difficult to deal with, provided they cite fairly and correctly those parts of the evidence they comment upon. The Learned Counsel for the Defendants, in his remarks on the evidence, totally forgot the evidence of Mr. Parker. If his evidence is to be believed, and I know no reason why it is not, he certainly gave important evidence in support of this charge—that the Defendants evidently appeared to be attempting to stop the officers, and assisting the escape of Mr. O'Connor. The Learned Counsel for the Defendants did not choose to deal with this evidence, though he conducted the cause with all possible discretion, abilities and eloquence. As I have before observed, there is apparently a great deal of contradiction in this cause. I must again state the observation of Mr. Whitbread, and which was obvious if he had not made it, that, “in such a scene of tumult and confusion, many things must pass which escape the observation of every individual.” But there is no doubt of one thing—one thing is clear: if Rivett had not the scuffle which he swears he had with Mr. Fergusson and my Lord Thanet, and if he did not wrench a stick out of Mr. Fergusson's hand, he is palpably forsworn, and grossly perjured. For him there is no excuse in the world. What motive he might have I do not know; he has no interest; and in weighing the testimony of witnesses, I cannot consider the rank of a person, nor his station. It is clear, if he has not told the truth, he is guilty of perjury. In this scene of tumult, men's minds must have been greatly distracted. It is for you to say what degree of credit you will give to all the witnesses.—These are the observations I have

to make ; and I should retire from my duty if I had not made them to you.

It has been said, in the course of this cause, that it was against all probability.—Was it probable that an attempt was meditated to effect the escape of a person such as Mr. O'Connor in a Court of Justice, in a large town, and in a public part of that town? Was it probable that this man himself should attempt that, which, Mr. Sheridan said, appeared to him to be an act of madness? Is it most likely that he should have attempted this with hopes of success, with or without assistance? This is matter for your consideration. It is very likely you have forestalled all the observations I have made; but still it was not less my duty to make them. The whole of this case is for your decision. It is a case in which the interests of the individuals, as well as of the Public, are highly embarked.

At eleven o'clock at night the Jury retired; and after being out about an hour, they returned with the following verdict:

THE EARL OF THANET,	} <i>Guilty.</i>
ROBERT FERGUSSON, ESQ.	
DENIS O'BRIEN, ESQ.	<i>Not Guilty.</i>

Fiday, 3d May.

MR. ATTORNEY-GENERAL—In this case of the King against Sackville Earl of Thanet and Robert Fergusson, Esq. I have to pray of your Lordships the Judgment of the Court.

LORD KENYON (*to Mr. ERSKINE*)—Have you any thing to say for the two persons convicted?

MR. ERSKINE—The cause having been tried at Bar, your Lordships are already apprized of every thing I could have to offer. I believe Lord Thanet and Mr. Fergusson wish to say something to your Lordships.

LORD THANET:—

My Lords, Before the Sentence is pronounced, I beg leave to address a few words to the Court:—not for the purpose of impeaching the veracity of the witnesses for the prosecution, or of arraigning the propriety of the Verdict: on those points
I shall

I shall say nothing. What I mean to submit to the Court is, a short, distinct narrative of the facts, as far as I was concerned in them.

I attended the trial at Maidstone in consequence of a subpoena. When I had given my evidence, I retired from the Court, without any intention of returning, until I was particularly requested to be present at the defence made by Mr. Dallas, the prisoners' Counsel. At that time I had never heard of the existence of a warrant against Mr. O'Connor, nor of any design to secure his person if he should be acquitted.--- The place I sat in was that which Mr. Dallas had quitted, when he removed to one more convenient for addressing the Jury. While sitting there, I heard, for the first time, from Mr. Plummer, that he had reason to believe there was a warrant to detain Mr. O'Connor. When the verdict was pronounced, I went into the Solicitors' box, to shake hands with Mr. O'Connor, which I did without even speaking to him. Many others pressed forwards, apparently for the same purpose. Upon a call for silence and order from the Bench, or from one of the Officers of the Court, I immediately sat down on the seat under that part of the dock where Mr. O'Connor stood. At that period some confusion arose, from several persons attempting to get towards him, one of whom said he had a warrant to apprehend him, for which he appeared to me to be reprimanded by Mr. Justice Buller, in some few words, which I did not distinctly hear. The moment the Judge had passed sentence on O'Coigly, a most violent pushing began from the farther end of the seat on which I sat. From the situation I was in, I did not perceive that Mr. O'Connor was attempting to escape. He was a good deal above me, and I sat with my back to him. I continued sitting in my place, until several persons on the same seat were struck, among whom, I imagine Mr. Gunter Browne was one, from the complaint he afterwards made of ill-treatment, but whom I never saw before or since to my knowledge. I then began to feel the danger I was in; but the tumult increased about me so rapidly, that I was unable to get over the railing before me. I stood up, however, and used all the efforts in my power to go towards the Judges, as to a place of safety; but at that moment, by some person or other, I was borne down on the table, where a man (I afterwards found was Rivett) struck at me several times with a stick, which I warded off, as well as I was able, with a small walking-stick.---Rivett, as he struck me, charged me with striking him first, which I denied, and called out to him, as loud as I could, that I had not struck him.

I have now detailed, as clearly as I am able, my situation and conduct, during the disturbance; and I do most solemnly declare on my word of honour, which I have been always taught

taught to consider as equally sacred with the obligation of an oath, and am ready to confirm by my oath if I am permitted to do so, that I never did any one act but what was strictly in defence of my person. It is not at all unlikely, that, in such a scene of confusion, I might have pushed others, who pressed against me, to save myself from being thrown down; but I most solemnly deny that I lifted my hand or stick offensively, or used any kind of violence to any person. I declare upon my word of honour, that I knew nothing of the existence of a warrant to detain Mr. O'Connor, until I heard it from Mr. Plummer; and that, even then, it never entered into my mind that it was to be served upon him in the Court, until some person called out that he had a warrant. I declare upon my word of honour, that the obstruction which the officers met with on the seat where I sat, was perfectly unintentional on my part, and was solely owing to the situation I was in:—that I did nothing offensively, but, on the contrary, was violently attacked and assaulted; and that I retired from the scene of confusion as soon as I was able. And, finally, I do most solemnly declare upon my word of honour, that I did not concert with any person the rescue of Mr. O'Connor, by violence, or by any other means whatsoever; that I had no idea of doing it alone; and that I was not privy to any consultation of other persons, either for the purpose of rescuing Mr. O'Connor out of the custody of the Court, or of preventing the execution of the warrant.

As I hold myself bound to state fairly, not only what I did, but what I said, as far as it is in my power to recollect what passed, with the agitation of such a tumult on my mind, I acknowledge that some words may have escaped me, which I ought not to have spoken. I am charged with having said, “that I thought it fair that he should have a run for it.” I will not dispute about the exact words. I confess they were extremely inconsiderate. Some allowance, however, I think, may be made for the instant feelings of a man so ill-treated as I had been.

My Lords, I am not sanguine enough to expect any immediate advantage from these declarations. I know they will not avail me against the Verdict: but the truth of them will not be suspected by those who know me; and hereafter, when all the circumstances of this transaction shall be coolly reconsidered, I am confident they will have weight with the Public.

“My Lord, I have an affidavit prepared, if your Lordship will accept of it.”

LORD KENYON.—To the same effect?

LORD THANET.—Yes, my Lord.

LORD KENYON.—We cannot here receive an affidavit,
against

against the verdict of a Jury : but I believe it may be ordered to be filed ; I believe there is no objection to that.

MR. ERSKINE.—I believe there is not, my Lord.

*It was ordered to be filed.**

Mr.

** AFFIDAVIT.*

The Defendant the Earl of THANET maketh Oath, and saith; That he attended at the Special Commission held at Maidstone, in the county of Kent, for the Trial of Arthur O'Connor, Esq. and others, for High Treason, in consequence of a Subpœna served upon him, to give evidence on behalf of the said Arthur O'Connor, and which was the sole excuse of his attending at the said trial ; and he saith, that after he had given his evidence, he retired from the Court, and had no intention of returning thereto, till he was particularly pressed to be present to hear the defence of the Counsel for the Prisoners, merely as a matter of attention and countenance to the said Arthur O'Connor, who was his acquaintance ; and he further saith, that at that time he had no knowledge whatever of the existence of any warrant against the said Arthur O'Connor, nor of any intention of securing his person, if he should be acquitted on the indictment. And this Deponent further saith, that he sat in the place which Mr. Dallas had left, when he went to a more convenient one for the purpose of addressing the Jury ; and that whilst he was sitting there, he for the first time heard from Mr. Plummer, that he had reason to believe there was a warrant to detain Mr. O'Connor ; and this Deponent further saith, that on the verdict's being pronounced, he slept into the Solicitors' seat to shake hands with Mr. O'Connor, which he did without even speaking to him, and without any other motive than that of congratulating him as a friend on his acquittal, at which time many others were coming to the same place where this Deponent was ; that upon a call for order and silence from the Bench, or from one of the officers of the Court, he immediately sat down on the seat under that part of the dock where Mr. O'Connor stood, and at that period a slight confusion arose from several persons attempting to get towards Mr. O'Connor, one of whom said he had a warrant to apprehend him, for which he appeared to be reprimanded by the Hon. Sir Francis Buller, in a few words which this Deponent did not distinctly hear. And this Deponent further saith, that at the moment the Judge had passed sentence of death on O'Coigly, the most violent pushing began on the seat on which he sat (this Deponent not observing that Mr. O'Connor was attempting to get away), and he continued sitting in his place till several persons on the same seat were struck, and amongst whom he believes was Mr. Gunter Browne, whom he never before or since had seen to his knowledge ; and from that moment this Deponent began to feel the danger he was in, the tumult about him increasing so rapidly that he was unable to get over the railing before him ; that however he stood up, and used all the efforts in his power to go towards the Judges as a place of safety ; but he was instantly pushed down on the table, when a man, whom he has since found was John Rivett, struck at him several times with a stick, which blows he warded off as well as he was able with a small walking stick, the said Rivett charging this Deponent, as he struck at him, with striking him first, which this Deponent denied, calling out at the same time as loud as he could, that he had not struck him. And this Deponent further saith, that he never did, during the said disturbance, any one act, but what was strictly in the defence of his person, though he admits that he might have pushed several persons that pushed against him, to prevent his being thrown down, but that he did not lift hand or stick,

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Mr. FERGUSSON.—My Lords, I have nothing to offer to your Lordships, either with respect to the charge itself, the manner in which it was proved, or with respect to my own peculiar situation, upon which your Lordships' judgment, whatever it may be, must make a deep and lasting impression. —I cannot so soon have forgotten the manner in which these topics were urged in your Lordships' presence, in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men.

I gladly, however, avail myself of the privilege of addressing your Lordships, because it enables me thus publicly to say, that, whatever be the political opinions which some may choose to ascribe to me,—whatever be those which I do in fact entertain,—opinions which I believe to be strictly consonant to the best principles of the law and constitution of my country ; —but whatever be those opinions,—whatever, even, my Lord, be the appearances against me, standing where I now do,—still I can with truth and sincerity declare, that there is no man who hears me, who is more deeply impressed with a sense of the respect which is due to the administration of Justice, of the strict obedience which should be paid to the proceedings of its Courts, and of the honour and reverence which should ever attend the persons of its Judges. Weak, indeed, must be the opinions, or wicked must be the views, of that man who wishes to degrade the authority of the Law ; for, without it, not one of the blessings of society can have security for one moment. My
Lords,

or use any violence whatsoever, to the said John Rivett, or any other person. And this Deponent positively saith, that he was not privy to, or acquainted with, the existence of any warrant to detain the said Arthur O'Connor, until he heard of such warrant from Mr. Plumer, as before set forth. And that it never entered into his mind that it was to be served upon him in Court, until the person before mentioned called out that he had a warrant. And this Deponent farther saith, that the obstruction the officer met with on the seat on which this Deponent sat, was perfectly unintentional on his part, and solely owing to the unfortunate situation in which he had accidentally placed himself, as the seat was so narrow that it was with great difficulty any person could pass that way. And this Deponent further saith, that he did nothing with intention to offend the Court, or any other person; but, on the contrary, he was violently attacked and assaulted ; and that he retired from the scene of confusion as soon as he was able. And this Deponent farther saith, that he doth most solemnly upon his oath declare, that he had not consulted, concerted, or advised with any other person, or persons whomsoever, to favour the escape of the said Arthur O'Connor, either by violence, or any other means whatsoever ; and that he had no idea of doing it alone ; and that he was not privy to the consultation or agreement of any other person or persons, either for the purpose of rescuing the said Arthur O'Connor out of the custody he then was in, or preventing the execution of any other warrant upon him.

THANET.

Sworn in Court the 3d of May 1799.

By the Court.

Lords, I can safely acquit myself of this part of the charge, because my reason, as well as my conscience, tells me, it is the last offence I am capable of committing.

I appear, however, before your Lordships, to receive that judgment which your duty calls upon you to pronounce, in consequence of the verdict of a Jury.—That verdict I do not mean to arraign: it was given on contradictory evidence, the value and balance of which it was the peculiar province of the Jury to weigh and to decide.

But if your Lordships' long practice in Courts of Justice shall have shewn you the fallibility of human testimony,—if it shall have shewn you, still more, the fallibility of human judgment founded upon human testimony, I hope I may meet with your indulgence, if I here make a solemn declaration of that, with respect to which I alone *cannot* be mistaken.

My Lords, upon the occasion which has given rise to these proceedings, I was of Counsel for one of the prisoners who was tried at Maidstone. I was seated in the place which was allotted for the Counsel for the prisoners; and being wholly engaged in the discharge of my duty, I solemnly aver, that whatever might be the previous consultations or conversations of others, with respect to the practicability or impracticability of a rescue, I never had even heard the rumour that a fresh warrant was in existence, until after the Jury had retired to consider of their verdict. It was not till after they had so retired, and very shortly before they returned into Court, that I learned that circumstance. I was in my place, seated where I had been during the greater part of the day, at the moment when the verdict was delivered; and I do most solemnly aver, that from that moment until I was pressed upon by the crowd, I did not stir from that seat. I do farther declare, that when I was forced upon the table, I used no violence to any one; that the whole of my endeavours went to allay the ferment, and to remove those of my friends whom I loved and regarded, from the scene of disturbance, in order that they might not be implicated in any charge that might afterwards be brought against those who were the authors of it.

I can therefore say, in the presence of this Court, and under the eyes of my countrymen—that which, in the name of my God, I have already sworn—that I am innocent of this charge.

*Here Mr. Fergusson put in an Affidavit, which he had previously sworn.**

Mr.

** AFFIDAVIT.*

ROBERT FERGUSSON, of Lincoln's Inn, Esq. one of the said Defendants, maketh Oath, and saith, that he was of Counsel assigned by the Court

MR. ATTORNEY-GENERAL—My Lords, in this stage of the business, I have very few observations to offer to your Lordships' attention.—My Lords, there is one fact established beyond all doubt—I mean, that, at the trial at Maidstone, there happened a proceeding disgraceful to the country, inconsistent with the security of the administration of its justice, and which was in its nature such as most imperiously called upon me to use those means which the law had placed in my hands, to check such proceedings in future.

My Lords, I owe it to the Noble Peer who stands before me, and I owe it to the Learned Gentleman who has been bred to my own profession, and I owe it to myself and to the public, to declare to your Lordships, that no inducement could have persuaded me to institute this prosecution, but a conviction, produced by that evidence which was laid before me, that the Noble Lord and the other Defendant were justly implicated in the charge. My Lords, I am very far from saying, that such a species of information as fully justifies and makes it my bounden duty to institute a prosecution, is always, therefore, that species of information upon which a verdict is due from the Country against the Defendants. It was my business to institute the inquiry;

Court for John Allen, one of the Prisoners indicted with Arthur O'Connor, for High Treason, at a Special Session held at Maidstone in May last, and that as such Counsel he was employed in Court during the whole of the day, in the night of which the riot charged in the information took place; he saith that he neither knew or had heard of any fresh warrant against the said Arthur O'Connor, until the Jury had gone to consider of their verdict, and very shortly before they returned to deliver it. And this Deponent further saith, that he was in the place allotted to him as Counsel, when the Jury returned into Court with their verdict; and that about that time he complained to the Court of the interruption which was given to its proceedings by the violence of a person who was pressing forward between the Prisoners and the Court; and that upon the complaint of this Deponent, Mr. Justice Buller ordered the said person to be quiet. And this Deponent further saith, that from the time when the Jury returned with their verdict, until after sentence was pronounced and the disturbance began, the said Deponent remained in his place as Counsel, and did not leave it until compelled by the violence of those who pressed upon him from the bench behind. And this Deponent farther saith, that when forced upon the table, he used no violence to any one, but used every means in his power to allay the ferment, and save the Earl of THANET from the blows of John Rivett, without offering any violence to the said John Rivett. And this Deponent farther saith, that he had not, during any part of the disturbance, any stick, sword, or other weapon in his hand, and that he did not use or offer violence to any one. And this Deponent farther saith, that he neither attempted to rescue the said Arthur O'Connor, nor did he at any time agree with others to attempt such rescue, nor was he in any way aiding or assisting, nor did he at any time agree with others to aid or assist the said Arthur O'Connor, in any attempt to be made by him to escape.

• ROBERT FERGUSSON.

*Sworn in Court the 3d day of May 1799,
By the Court.*

inquiry; and if this cause had been tried before one of your Lordships only, or if it had been tried before any other Judges, and the circumstances of the trial had been reported to your Lordships, it might have been my duty to have enlarged now upon the proceedings which passed upon the day of the trial. The whole case, however, was before all your Lordships: your Lordships know with what diligence it was investigated: your Lordships know with what abilities it was defended: your Lordships know what evidence was given upon the defence; and your Lordships, also, cannot be ignorant what evidence might have been given, if that defence could have been sustained.

My Lords, my principles with respect to all persons of rank, operating as fully with regard to Lord Thanet as any man, and my habits with respect to my brethren in the profession, I assure your Lordships, would press me at present, if I stood under a more convincing sense of duty, that it was my business to address your Lordships at large: What I had in view in this matter was this—to inform the subjects of this country, that in Great Britain we have the true equality, equality under the Laws; that the laws will afford protection, on the one hand, to the man in the poorest condition, against the man who would oppress him; and that the Law, on the other hand, will secure the man in the highest condition in the enjoyment of that of which the poorest might wish to despoil him, and that the law will protect the public equally, and under equal sanctions, against the rich and against the poor, who are seeking to violate that Law—against the man of rank, and the man of no rank.

My Lords, having made these observations, I feel it to be my duty, addressing your Lordships with respect to these Defendants, as I would address your Lordships with respect to the poorest individuals in the country,—I feel it to be my duty to forbear any observations upon any thing which your Lordships have heard. The only one that I could make with propriety would be, to join in the application, that what your Lordships have heard may have all the weight due to it; I mean, due to it according to the principles upon which your Lordships here administer justice; and I am sure your Lordships will pay attention to it in cases of the lowest degree as well as of the highest.

Having done my duty to the Public, according to what my notions of my duty require of me, I cannot do better than leave the case where it is, and to call upon your Lordships to do that which is right between these Defendants and the Public.

LORD KENYON.—You have not alluded to any particular punishment that you supposed to be annexed to the offence.

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The indictment that has been read to us, discloses an offence, which, though it is not new in our Law-books, is rather new in the particular times in which we live. Nothing of the kind has recently happened; and the Court is certainly in an extremely anxious situation. A considerable degree of anxiety always attends the execution of the criminal justice of the country. Some cases administer more anxiety than others; and this, to say no more of it, is a case of great anxiety to those who are to administer the justice of the country in this case. We are to obtain information, as well as we can, by means of those who are advocates, especially when we are attended on each side as we are attended in this case, which calls upon them for assistance before we pronounce judgment. You may be sure we have not come to this stage of the proceeding without having considered and reconsidered the case of these parties; but still justice is better administered when we have all the assistance that can be given us: therefore we wish, on a future day, to have it argued, whether the Court have any discretion in the sentence they are to pronounce? If there is a specific sentence, our discretion is taken away: the discretion is elsewhere, and not in a Court of Justice. If a man is convicted of murder, we have no discretion; but judgment of death must be pronounced: and so, in other cases, where a specific punishment is annexed by the law, it takes away all discretion from the Court. We wish, therefore, that it may be looked into and brought forward on some future day, that the Court may have all the assistance that the Bar can give it. At present we cannot expect that assistance. It must stand over till the next Term; and in the mean time, unless something is said to the contrary, these two persons must be committed.

MR. ATTORNEY-GENERAL—As to what your Lordship has intimated with respect to the sentence, I should have felt myself in some degree blamable, if I had not considered that question. I do not mean to tell your Lordships that I have come to the right conclusion, because that is for your Lordships' judgment: but, unless I mistake the case, this is a case for discretionary punishment; and I will tell your Lordship why, unless your Lordship tells me that this is not the proper time to state it.

LORD KENYON—If you choose to argue the point, the Court will be very glad to hear you.

MR. ATTORNEY-GENERAL—I conceive that, if this had been an information for a rescue, there it would have been a specific sentence. I conceive also, that, if they had been indicted for actually striking in Court, there it would have been

been a specific sentence: but this is an information for an endeavour to rescue.

LORD KENYON—Have you looked at all the counts in the indictment?

MR. ATTORNEY-GENERAL—I have read the information an hundred times.

LORD KENYON—You see, Mr. Attorney-General, we cannot but have a great deal of solicitude to go upon the best information; because, if there is a specific punishment attached to this offence, and we do not conform to it, a writ of error will lie, and there is an end of the judgment.—Writs of error have been brought where the sentence has not gone up to the extent of the punishment.—Not only in cases of treason, but also in other cases, judgments have been reversed.—We must, therefore, take care, in giving our judgment, that it is conformable to law.

MR. ATTORNEY-GENERAL---I certainly feel that the best execution of my duty will be, to attend to what your Lordships was pleased to intimate; and with respect to any information I can give the Court, any day they shall appoint, it will be a duty incumbent upon me, as well as my inclination to give it---It is necessary, however, that I should say this, that I do not pray a specific judgment, because I conceive I am not entitled to it.

MR. JUSTICE GROSE---Upon what ground, Mr. Attorney?

MR. ATTORNEY-GENERAL---As I understand the subject, if there was an actual rescue, it is a specific Sentence: so I apprehend also, if there is an actual striking, and the offence is laid to be *coram Domino Rege*, then it is a specific punishment; but here it is an endeavour to rescue.

LORD KENYON---It is expressly declared to be in the King's Court, in the presence of the Justices.

MR. ATTORNEY-GENERAL---I think your Lordships will find it settled long ago.

LORD KENYON---It is on that very subject that hereafter we wish to have information.

MR. ERSKINE---Your Lordship intimated that the Noble Lord and the Learned Gentleman must be committed, if nothing was said to the contrary: his Grace the Duke of Bedford, and the Earl of Derby, are attending to offer themselves as bail.

LORD KENYON---That must depend upon the Attorney-General.

MR. ATTORNEY-GENERAL---My Lord, I feel that I should not do my duty as Attorney-General of England, if I
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was to make any difference between Lord Thanet and Mr. Fergusson, and any other Defendants in this Court.

LORD KENYON---We will give some early day in the next term.

MR. JUSTICE GROSE---The Gentlemen who are of Counsel for the Defendants, will be so good as look very particularly into the form of this Information : We have looked into it, as our duty was, with great attention, and we find it to be a case of great difficulty.

MR. ERSKINE---Your Lordships may depend upon all the assistance that I can possibly afford.

MR. JUSTICE LAWRENCE---There is a case in Croke Charles expressly stating that the offence may be laid *coram Domino Rege*, or in the presence of the Judges---Do you know of any other case ?

MR. ATTORNEY-GENERAL---There is a case in Owen.

MR. JUSTICE LAWRENCE---That is the same case as in Cro. Eliz.

LORD KENYON---The cases in Croke Eliz. are said to be not of such great authority as those in the latter part of Croke's lifetime : I remember to have heard Mr. Justice Forster say so.

As soon as you are prepared, the beginning of the next term, to argue it, we shall be glad of your assistance.

Monday 10th June.

MR. ATTORNEY-GENERAL---My Lords, I have the honour of addressing your Lordships on the part of the prosecution, in the case of Lord Thanet and Mr. Fergusson ; and to inform you, that since my last address to the Court on this subject, I have received, and have now in my hand, His Majesty's royal command to cause to be entered a *nolle prosequi* on such parts of this Information as have in fact raised any doubt whether the judgment of the Court is discretionary. My Lords, in obedience to His Majesty's royal will and pleasure, I have accordingly caused to be entered a *nolle prosequi* on the first, second, and third counts of the Information. My Lords, His Majesty's gracious disposition has, of course, made it my bounden duty not to act on these Counts of the Information with respect to the nature of the judgment on which any doubt might have been entertained.

In obedience to what your Lordships were pleased to intimate, I certainly had taken the pains to make an extremely laborious investigation and research into the grounds on which I conceived this point turned. The result, certainly, has not been unsatisfactory to myself; but my duty at present, in obedience to His Majesty's commands, is, to pray judgment on the fourth and fifth counts of this Information. My Lords, your Lordships will allow me barely to state, that these counts charge a conduct highly dangerous, and utterly inconsistent with the orderly, and therefore with the safe administration of justice.

My Lords, I conclude what belongs to the duties of my office, by repeating again, in the presence of your Lordships and of the Public, that my motive in commencing this prosecution was to secure the orderly and safe administration of justice; and while His Majesty does me the honour to entrust me with the execution of the duties of this office, in the discharge of my duty to him as the great Conservator of Public Justice, in the discharge of my duty to his people, his subjects, for whom the justice of the country is administered, I think it not improper to add, that I shall vindicate the honour of the Laws, and the safety of those who administer them, on every occasion, and by every means within my power.

MR. JUSTICE GROSE---Sackville Earl of Thanet, and Robert Ferguson, you, and each of you, have been found guilty of a misdemeanour, by a verdict of a Jury of your country, on an Information filed against you by His Majesty's Attorney-General, charging you with a riot, and an endeavour, in open Court, before His Majesty's Justices of Oyer and Terminer, to rescue Arthur O'Connor out of the custody of the Sheriff, in which he had been detained during and after the trial for high treason, and thereby to enable him to go at large. There are some counts, stating it to have been accompanied with violence; but of those I have no occasion to take notice. Other counts charge you with having made a riot and disturbance in one of His Majesty's Courts of Justice, and interrupting and obstructing His Justices in the lawful and peaceable holding of that Court.

The offences charged against you are ranked amongst the highest and most atrocious misdemeanours that can be committed in a country whose pride, whose boast, whose comfort, consist in the free and uncontrolled administration of its laws. Language cannot describe your offence more forcibly, and more eloquently, than that which your Counsel used, when he stated, that it was properly attacking Justice in its Sanctuary. Impressed with the importance of this trial, as it concerned the Public and the parties accused, the Counsel on each side, in a
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most awful and exemplary manner, discharged their respective duties. The Attorney-General contented himself with stating the law, as delivered down to us by our ancestors---with stating the facts to which that law was applied; and he stated them as became an advocate of the Public, plainly, but perspicuously, without a single comment of aggravation.

At the close of the case proved for the Crown, upon an intimation dropped by the Counsel that the evidence of some of the Defendants might be material in exculpation of others of them, a question was put by the Court to the Attorney-General, whether he thought the case was so clearly proved against two of the Defendants, as to make it necessary for their Counsel to proceed in their defence. The Attorney-General, knowing that, in an English Court of Judicature, offences were to be plainly proved, and not to rest on doubtful evidence, consented to their acquittal; and they were immediately pronounced Not Guilty, that such other of the Defendants who thought their evidence necessary to their exculpation, might have the benefit of their testimony. Your Counsel have eminently discharged their duty. The Law stated by the Attorney-General was admitted. The evidence of the witnesses to be called for the Defendants, was accurately and perspicuously stated; and every argument that ingenuity could suggest, taken in to its assistance. Every advantage that the most persuasive eloquence could give it, was used, to prove the improbability of the facts insisted on by the Crown, and to establish your innocence.—As to the Jury, their conduct was most exemplary. Called from their distant homes in another county, they obeyed the commands of Justice; they attended us with patience, and determined with deliberation: their attention was evident from their discrimination; they acquitted one Defendant, and pronounced you guilty. The evidence was, in fact, convincing.—Whoever recollects the prominent features of the case, as they were proved on the part of the Crown, and that which was not proved on your part, can hardly entertain a doubt of the propriety of the verdict. We cannot but remember the loose rumour, in the town of Maidstone, of a warrant to detain Arthur O'Connor, in case he should be acquitted. There was an affected doubt whether it would be so, and that publicly notified; and there was as publicly a declaration from your Lordship—whether from a knowledge of what was intended on mature deliberation, is best known to yourself---there was a declaration, that it was fair that he against whom there was known to be a warrant for High Treason, should have a run for it. I cannot but remember the attempt of you, Robert Ferguson, against your better knowledge, to induce the Court to believe, that the officers who were known to be sent by

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persons

persons authorized to send them, were the occasion of the tumult, when they were executing the very act which, within your knowledge, it was their duty to execute. We cannot but recollect how studiously you were placed in a situation well calculated to obstruct the officers, and to effect the rescue of Arthur O'Connor.

* Observing therefore these, as well as the more minute circumstances, I wonder not the Jury pronounced you Guilty of that intention, of which your witness, on his oath, did not dare to affirm he believed you innocent.*

Thus tried, and thus defended, you stand convicted, by an English Jury, of an offence (to the honour of modern times I speak) which has been unheard of in this kingdom during the present century.---I know not whether, in all its parts, there was at any time so singular a transaction as the conviction of two persons, of whom the one is a Peer of Parliament and an Hereditary Sheriff, the other a minister of one of His Majesty's Courts of Justice---combining to break the peace in the face of that Court that had been assembled to try men accused of the greatest offence to Society the law knows, High Treason---attempting to rescue from the arms of the law a man, acquitted, it is true, of one High Treason, but charged with another---how justly, is not here the question. Certain it is, if his conscience could have whispered him that he was innocent, it was not probable he would have desired to escape. As certain is it, that those who believed him innocent, would have best consulted his reputation, as well as their own, by finding

* Either I mistake wholly the evidence of Mr. Sheridan, or that gentleman did say upon his oath, not only that he *believed us to be*, but that we *positively were* innocent of every thing with which we were charged. He swore that he observed us, and that we did *not* commit any one of the acts of riot and outrage imputed to us by the information.

It is true that in his cross-examination, being asked, whether he believed that we *meant to favour the escape of Mr. O'Connor?* he answered, that his *belief* was that *we wished Mr. O'Connor might escape*. Mr. Sheridan, no doubt, judging of the feelings of others by his own, *believed*, that those who might think Mr. O'Connor an innocent and a persecuted man, would have been *glad that he had escaped*. This is the belief of Mr. Sheridan as to the supposed existence of a certain *sensation in our minds*. But surely our guilt or innocence did not depend upon what we wished, but upon what we *did*. It is one thing to have *felt a wish* that Mr. O'Connor might escape (which, whether we felt or not, no witness can with certainty say), and another to have attempted, by acts of violence and desperation, to *rescue him*.

It was truly said that to have attempted to rescue Mr. O'Connor would have been an "act of insanity," the thing being *impracticable*. But it appears to me that it would have been an act of still greater insanity, if the thing had been *practicable*. We were, it seems, to become felons or traitors ourselves, that Mr. O'Connor might escape! In judging of the probabilities in this case, I should have had no objection that each of my Jury had put the question to himself, "Is there any friend for whom I would do as much?"

R. F.

finding for him an opportunity, if otherways he had not one, of proving himself innocent.

This is an offence very little known in this country; because, from their cradles, Englishmen are taught, that the proud distinctions they can boast between this and most other nations upon earth, is the regular and uninterrupted administration of its laws, without which no nation can be free; and without which most governments must be intolerable. Rare, however, as this offence has been, our ancestors, sensible of its enormity, ranked it in a class of crimes next to felony. Feeling the absolute necessity of preserving sacred that peace, that decorum, that awe, which is one of the very first principles of the administration of justice as due to its Courts, they adopted a remedy by a punishment all but capital.----So we read in our earliest law-books. I shall observe, it is a remedy not to be found among our written statutes, but known from the earliest times, and interwoven with the very Constitution. Human ingenuity is not equal to the task of imposing a punishment adapted to every possible case.----I am aware of the imperfections of human nature, of the finite extent of human wisdom, and of the impossibility of affixing punishments exactly suited to every shade and gradation of crimes: they will vary as much as the intellects, passions, and depravity of one man will exceed those of another. The same wisdom in our Constitution has provided a remedy for this defect, by vesting in the King the brightest ornament of the Crown, the prerogative of Mercy---that beautiful appendage of royalty, by which his grace may mitigate, but his power cannot add to the sentence of the law. Most sincerely do we rejoice that such is the Constitution of this Country.----By a humane mind, the task imposed upon this Court, of passing discretionary sentences on crimes, would not be to be borne, if we were not supported by the consoling reflection that there resides elsewhere a power that can mitigate, and a wisdom that can correct, those errors which we, who know we are but men, feel that we, as men, may be liable to commit.----This shews, too, the wisdom of our ancestors in committing this sacred-trust to the Sovereign. To the discreet and amiable exercise of the prerogative of his Mercy, that which has passed this day, the declaration which His Majesty has given by his Attorney-General, amply bears witness. The benevolent exercise of the one, proves the wisdom of the other. Those counts which describe an offence that must have been followed by a specific sentence, are, by order of the King, now abandoned: they are no farther to be prosecuted; and nothing of them will in future, I hope, be remembered, except the extreme danger and punishment attending the crime, and the Sovereign's grace in not requiring the sentence of the law

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to be inflicted on those who have been pronounced Guilty of having committed it.

Your feelings cannot be gratified, on this occasion, by this seasonable and benevolent exercise of the prerogative, more than are the feelings of those on whom the painful task is imposed, of administering the Penal Justice of the Country.---Much however, as has been remitted---much, too much, still remains on this record, to be passed over without animadversion, or considerable punishment. The offence described in the 4th and 5th counts, on which it is incumbent on this Court to give Judgment, I must state again:---It is, that you, with others, unlawfully, and maliciously, to prevent the due and peaceable holding a Session of Oyer and Terminer, during the continuance of that Session, in the presence of the Justices and Commissioners, did unlawfully, and tumultuously assemble to prevent the due and peaceable holding of it, and did unlawfully, riotously, and tumultuously, make a very great noise, riot, and disturbance, and did thereby interrupt and obstruct the Justices and Commissioners from the peaceable holding of that Session. Thus you are convicted of having broken the Peace, violated the Law, and of having interrupted the Administration of Justice, in the presence of His Majesty, virtually represented by his Judges and Commissioners, sent by him to do justice to his people.

The horror and dismay this tumult necessarily occasioned to the mind of every man feeling for the honour of his country, and the support of its dearest rights, in preserving unsullied the proceedings of its Courts of Justice, it is more easy to conceive than to describe; and yet by one witness it was described as an idle panic.---I was astonished at the phrase, recollecting the evidence of the Learned Judge who was a witness to this disgraceful scene, and whose veracity and firmness no man who knows him will doubt; I say, recollecting that he, on his oath, states he felt great alarm, and thought himself and the other Judges in great danger (and to the truth of that assertion the record bears witness), in this attempt to obstruct the justice of the country.

One great aggravation, in the case of you Sackville Earl of Thanet, is the very high and important station you hold in the country, the duties of which station must have suggested to you how incompatible with your dignity, how inconsistent with peace and order, and with the principles upon which civil society is formed, your conduct on this occasion has been. As a great Peace Officer of the Crown, as Hereditary Sheriff of an opulent and populous county, your duty called upon you to be the first man to keep the peace there, and to be the last man to break it any where. As a Peer and Hereditary Judge, you should have had in constant memory the decorum, the reverence, and the solemnity due to a Court of Justice. By your conduct you
should

should have contributed to them yourself, and by your example enforced the sense of them to others. As a Legislator, you must have known how vain it is to make laws, if the observance of them is not to be enforced; and on the tablet of your memory this everlasting truth should have been engraven, that the rank, and honours and dignities you enjoy, are the fruits of good order, of that good order which is essential to the preservation, as well as to the establishment of a well-regulated Monarchical Constitution. Be assured, that if the time should ever arrive (which God forbid) when the boundaries of the orders of the Constitution are broken down, that very instant your rank, your offices, your station, your honours, unsupported by the law of the land, must crumble into dust.

As to you, Robert Fergusson, my farther address will relate to you, as a Gentleman called to practise at the Bar of an English Court of Judicature, as a member of a Profession as proud, as independent, as honourable, as any that exists among men. Your respect for that Profession, your duty to your Sovereign, your love for your Country, ought to have been motives in your breast powerful enough to have dissuaded you from having permitted, much less assisted, in any tumult which at that awful moment might disturb the attention of the people. You should have reflected on the consequence of a crime, that baneful crime which has ever sapped the foundation of all society, and been the cause of the subversion of all Government, in affording any the slightest chance of escape to a prisoner, who, it is true, had been acquitted of one treason, but who stood charged with another. It was a duty which you owed to that Court of which you were an officer, and as such you were in the daily habit of being informed that a prisoner in the custody of the law, can never be discharged, till the officer of the law in whose custody he is placed, shall have an opportunity of having it certified that there is no other warrant lodged against him, either on the part of the Public, or any private individual. To hear this was in your daily practice: if you had indeed been ignorant of it when you went into that Court, the Learned Judge, to whose information you should have paid respect, had informed the bystanders and yourself that such was the law and the practice. Being totally inattentive to his observations, you did this, which argued too close a connection* with the prisoner in the intimate

* I think it necessary to make an observation here, that this expression may not be construed in a sense which I am convinced the learned Judge cannot have meant it to convey.

I can certainly have no wish to deny, that my connection with Mr. O'Connor was the same as that which was avowed by the very honourable persons who gave evidence for him at his trial. As to what has since been disclosed relative to Mr. O'Connor's views in Ireland, it should seem that he

intimate knowledge of that which he intended to attempt, and of the means by which he meant to make that attempt. Obedience to the law is in our very first rudiments. The absolute necessity of it, by your daily attendance in this Court, you were in the habit of hearing; and it is impossible you should have forgotten that very material chapter on the Crown Law which follows that on the Misprision of Treason, treating of the contempt of the King's Courts, and describing accurately the offence of which you have been guilty, and for which you now stand to receive the judgment of the Court. Acquainted as you must have been with this subject, you stand here as an offender against your own conviction, and your own better knowledge.

To the nature of your case the Court has paid great attention; and upon the most mature deliberation on the offences contained in the two last counts of this Information, this Court doth order and adjudge—

That you SACKVILLE Earl of THANET pay to the King a fine of 1000 *l.*; that you be imprisoned in the Tower of London for the term of one year; and that you give security for your good behaviour for the space of seven years, to be computed from the expiration of that period, yourself in the sum of 10,000*l.* and two sureties in 5000*l.* each; and that you be farther imprisoned till such security be given.

The sentence on you, ROBERT FERGUSSON is, that you pay a fine to the King of 100 *l.*; that you be imprisoned in His Majesty's jail of the King's Bench for the term of one year; and that you give security for your good behaviour for seven years, to be computed from the expiration of that period, yourself in 500*l.* and two sureties in 250 *l.* each; and that you be farther imprisoned till such security be given.

The Defendants having been committed on the 3d May, it is an imprisonment of one year and thirty-eight days.

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he had not chosen to engage his friends in a species of confidence, equally useless and dangerous, respecting the affairs of a country with which they had no concern.

For myself, I can very positively speak: and I do here most expressly and unequivocally disavow the having had, at any period, any knowledge (farther than that which might have been collected by every person from common report or conversation) of the views or schemes of any individual or body of men, such as have been disclosed to the world by the Reports of the Secret Committees of the two Houses of Parliament in Ireland.

This is the simple declaration of a fact which I feel myself called upon to make; and by which I do not mean to give either praise or censure to the conduct of any man, whose misfortune it has been to have had a share in the politics of that unhappy country.

ROBERT FERGUSSON.



THE KING

versus

THE EARL OF THANET AND OTHERS.

SOME OBSERVATIONS,

BY

ROBERT FERGUSSON,

ON

HIS OWN CASE,

AND ON

THE POINTS OF LAW

ARISING UPON THE INFORMATION.

THE KING

THE EARL OF THAMET AND OTHERS.

SOME OBSERVATIONS,

BY

ROBERT JUSSEAU,



IN HIS OWN CASE,

AND ON

THE POINTS OF LAW

ARISING FROM THE CASE.

SOME OBSERVATIONS
ON
HIS OWN CASE :
BY
ROBERT FERGUSSON,
ONE OF THE DEFENDANTS CONVICTED.

I SHALL begin by considering what the Charge is, as it appears upon the Record.

The Information states, that ARTHUR O'CONNOR, being in the custody of the Sheriff of Kent, was found *Not Guilty* of the High Treason with which he had been charged; and that, *before* any order or direction had been made or given by the Commissioners, or any of them, for his discharge, and *before* he was discharged, the Defendants did, *in the presence of the Commissioners,*

1. Make a riot;
2. Attempt to rescue Arthur O'Connor;
3. Aid and assist him in an attempt made by him to escape:

And that, the better to effect such rescue and escape, they did,

4. Assault and beat John Rivett, Edward Fugion, and Thomas Adams:

And that they did,

5. Obstruct and impede the Commissioners in the execution of their office.

The second Count charges, that Arthur O'Connor being in custody, &c. and before any order, &c. was given

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given for his discharge, the Defendants did, *at Maidstone,*

1. Aid and assist him in an attempt made by him to rescue himself, and escape:

And that, the better to effect such rescue and escape, they did,

2. Assault and beat Thomas Adams.

The third Count charges, that the Defendants did, *in the presence of the Commissioners,*

1. Make a riot,

And thereby obstruct and impede the Commissioners, &c.

2. Assault and beat John Rivett, Edward Fugion, and Thomas Adams.

The fourth Count charges, that the Defendants did, *in the presence of the Commissioners,*

Make a riot,

And thereby obstruct and impede the Commissioners, &c.

The fifth Count charges, that the Defendants did, *at Maidstone,*

Make a riot.

The charges thus variously laid in the Information, may in substance be reduced to these:

1. The attempt to rescue Mr. O'Connor;
2. The riot, assault, and battery;
3. The obstruction of the Commissioners.

The first may be said to be the *intent*; the second, the *means*; and the third is not so much a separate charge of itself, as a necessary consequence of the second, if proved. The Jury had, in fact, but two questions for their consideration:

1. Were the Defendants guilty of the riot, assault, and battery, charged?
2. If they were so guilty, was it with a view to rescue Mr. O'Connor?

To sustain a general verdict of Guilty upon all the Counts of the Information, it should have been proved, not merely that the Defendants were engaged in an affray or tumult in the Court---not merely that they were parties
to



to a scene of violence---not merely that they gave blows in the course of the tumult or affray;---but it should have been proved also, that *they* were in Law the rioters; that the assault and battery charged was in Law *their* assault and battery; and it should further have been proved, *that they attempted thereby to rescue Mr. O'Connor.* Now, let us see what was the evidence, upon which a general verdict of Guilty was returned in my Case.

The Witnesses for the Crown were,

Mr. Serjeant Shepherd,	Thomas Adams,
The Rev. Mr. Hussey,	Henry William Brooke,
Lord Romney,	John Stafford,
Sir John Mitford,	The Hon. Mr. Clifford,
Mr. Justice Heath,	Thomas Wagstaffe,
Mr. Abbot,	William Cutbush,
John Rivett,	— Omrod,
Sir Ed. Knatchbull,	AND
Thomas Watson,	Col. Parker.

Mr. Shepherd, Mr. Hussey, Sir Edward Knatchbull, Watson, Wagstaffe, Cutbush, Omrod, none of them speak to any fact which concerns me.

ADAMS and Colonel PARKER speak to something which was done by *some gentleman* in a wig and gown;* but neither of them know my person.

LORD ROMNEY speaks of an altercation he had with me about the words "*acquitted*" and "*discharged*;" which is no otherwise important than in this view, that one gentleman in a professional dress may be mistaken for another---for it was Mr. George Smith, as he himself relates, who had the altercation in question with Lord Romney.

MR. ABBOT, the Counsel who opened the Information, says, that when the Jury brought in their verdict, I called out, "He (Mr. O'Connor) is discharged." I shall only observe, that this was before any warrant was produced, and before any direction was given by the Judge for detaining Mr. O'Connor.

Mr.

* I cannot help noticing this question, which was so often put to the Witnesses for the Crown, after they had declared that they did not know my person: "Did you see *any gentleman* in a wig and gown" do so and so? Several of the Counsel who put this question were themselves in wigs and gowns upon the same occasion.

Mr. Justice HEATH, in his evidence---not pressed by any questions from my Counsel, not strictly called upon by the examination of the Counsel for the Crown, but yielding to the dictates of his own honourable mind---in speaking of my conduct, makes use of these words :
" I must do him the justice to say, that in the very short time I saw him, which was not above a minute or so, I did not see him say or do any thing to encourage the rioters."

There remains, then, the evidence of the Solicitor General, of the Honourable Mr. Clifford, of Rivett, Brooke, and Stafford.

The SOLICITOR GENERAL says, that when the Jury gave their verdict, I insisted that Mr. O'Connor was discharged; that after Mr. Justice Buller had pronounced sentence on O'Coigly, he saw me ENCOURAGING Mr. O'Connor to go over the bar---and that *not by words*, but *actions!* He swears, not merely to a gesture, but also to the meaning of that gesture!--I have only to observe, that this gesture, apparently to the Solicitor General, of encouragement, might have been, and I have reason to believe was, the gesture with which I accompanied the words sworn to by Mr. Bainbridge as addressed to Mr. O'Connor: " Be quiet, and keep your place; for nothing can hurt you." The motion of my hand accompanying this exhortation, might, and no doubt did, appear to the Solicitor General to be for a very different purpose.

That gentleman further says, that I *appeared* to him to follow Mr. O'Connor towards the narrow street of Maidstone. Mr. Clifford agrees with him in this point: but neither of them swear to any assault or battery---to any act of riot or violence on my part---to any obstruction given by me to the officers of Justice, or to any attempt of any kind made by me to rescue Mr. O'Connor. The Verdict cannot therefore have been founded upon their evidence.

Next comes THE EVIDENCE OF RIVETT; and I need not inform any one who was present at the trial, that, without his testimony, there would not have been a case to go to the Jury against any one of the Defendants. This man swears, that when Mr. O'Connor jumped over the bar, he (Rivett) was prevented getting forward by persons who had placed themselves before him; and being asked to describe particularly what passed which prevented him, he answers, " I was pulled down, or shoved
 " down,

“down, twice or three times; but by whom, I am not able to say. I then jumped forward as well as I was able, and was endeavouring to pursue Mr. O’Connor. Mr. Fergusson jumped upon the table; and, with a stick, flourished it in this way, to prevent my getting forward.”---“I then sprung at him, and wrenched the stick out of his hand; and he returned back to his former situation.” Rivett next describes what passed when he had thus wrenched the stick from my hand: “I was then,” says he, “knocked down by some person who drove against me---not with a stick; and as soon as I had recovered myself, I saw the person who had so shoved me down, and immediately struck him.” This person, he was afterwards told, was the Earl of Thanet. In his cross-examination, being asked, how long there might be between my going away and his meeting with the Earl of Thanet, he says, “a very few minutes---a minute or two.”

In the first place, the fact of my having had a stick at all, is positively denied upon oath by Mr. BAINBRIDGE, a gentleman now at the bar, who was seated immediately behind me, and had the best opportunity of observing the whole of my conduct. Mr. Law puts this question to him: “*Will you venture to swear, that, during the riot, he (Mr. Fergusson) had no stick?*” He answers, “I WILL.”---Is this, let me ask, negative testimony? or, is it not a fact as positively sworn to, as that to which Rivett swears?

Mr. MAXWELL, after describing the violence with which Rivett pressed forward, and the manner in which he attacked Lord Thanet, is asked, Whether, before this attack upon Lord Thanet, Rivett could have wrested a stick from my hand? Mr. Maxwell answers, “Rivett did not go to take a stick out of Mr. Fergusson’s hand---for he had no stick in his hand: he did not go up to Mr. Fergusson; but immediately went up to Lord Thanet, and struck him.” Mr. Maxwell is afterwards asked, Whether, if I had not only had a stick, but had brandished and flourished that stick, he must have seen it? His answer is, “I must have seen it: He was so directly before me, that it is quite impossible but I must have seen it. *I can swear that Mr. Fergusson had nothing in his hand, but a roll of paper in his right hand.*” How is this again? is it positive or negative testimony? Mr. Maxwell swears, not only that I had no stick in my hand;

hand; but he swears to what I had in my hand---namely, a roll of paper.

Mr. SHERIDAN is asked, " Did Rivett attack Lord Thanet before he possibly could have attacked Mr. Fergusson, and wrenched a stick from his hand?" Mr. Sheridan says, " He came immediately upon Lord Thanet when the tumult began."---The next question is, " He could, then, have no conflict with Mr. Fergusson, till after the conflict with Lord Thanet?" The answer is, " Certainly not."---Mr. Sheridan also says, that I had a roll of paper in my hand.

Mr. WARREN, a gentleman well known at the bar, relates the circumstances of Rivett's attack upon Lord Thanet, and then says, " Mr. Fergusson was upon the table *afterwards*, but not upon the table at any time I have yet spoken to;"---that is, I had not been upon the table, much less had I flourished a stick upon the table, before Rivett struck Lord Thanet, with a stick which he swears that he had wrenched from me when I *was* upon the table *some minutes before*. Mr. Warren also says, that he did not see me have a stick; and that, if I had had a stick, he thinks it impossible but that he must have seen it.

Mr. SMITH, a gentleman at the bar, who was drest in his professional habit, as I was in mine, relates, that it was *he* who had the first scuffle with Rivett; that he struggled for some time, in his own defence, against Rivett's violence; and that it was with some difficulty he succeeded in extricating himself. What happened then, according to Mr. Smith? "*The instant*," says he, " I extricated myself, I turned round, and saw a man pressing upon Lord Thanet; with this difference, that when I resisted him, I did not observe that he had any staff or stick; but when I saw him with Lord Thanet, he was striking Lord Thanet with a stick." Mr. Smith swears, that he thinks it impossible that he could have wrenched this stick from me: But is it necessary that Mr. Smith should swear it? What must have happened *in this instant* described by Mr. Smith, *this instant which he took to turn round*? I must have jumped upon the table, attacked Rivett by flourishing a stick over his head; he must have sprung at me---struggled with me---wrenched it from my hand: I must have retreated; *then a few minutes must have elapsed*; and then, and then only, he must have struck Lord Thanet---and with what? with the stick which
he

he had wrenched from me, when, if Mr. Smith speaks true, Rivett must have been engaged in a scuffle with him, *without a stick*, only an instant before.

Let us next see how Rivett's evidence agrees with that of Mr. Serjeant Shepherd, the Solicitor General, and Mr. Clifford, witnesses for the Crown.

And, first, of Mr. Serjeant Shepherd. It is necessary to keep in mind the different facts which Rivett swears to have taken place, between the time of Mr. O'Connor's jumping over the bar, and that of Rivett's striking Lord Thanet---his being shoved or pushed down several times---my getting upon the table, and advancing towards him---then my attack upon him by flourishing a stick---his springing at me, and wrenching it from my hand, and my retreat;---his being shoved or knocked down by some person---his recovering himself, and finding that it was the Earl of Thanet---and his then striking Lord Thanet with the stick which he had wrenched from me some minutes before. What says Mr. Serjeant Shepherd? "At the moment that Mr. O'Connor was getting over the bar, and some persons calling to stop him, there was a great noise certainly: Lord Thanet stood, in the way I have described to your Lordships, in the pass: The officers were endeavouring to press by him; and he stood, till, I think, in a *very short space of time*, he held his stick with both his hands over his head." In his cross-examination, Mr. Shepherd says, "Upon Mr. O'Connor jumping over the bar, the officers rushed forward to follow him: after they had made several pushes it was that I saw Lord Thanet in that position." Here is one continued scene described by Mr. Serjeant Shepherd, from the moment Mr. O'Connor jumped over the bar, until Rivett was engaged with Lord Thanet. He traces his Lordship, he traces the officers (among whom was Rivett), during this interval; and yet, during this interval, I am said by Rivett, full in Mr. Shepherd's view, to have been engaged in a conflict in which I must have made such a remarkable appearance. And with whom was I engaged? Whom did I attack? Who sprung at me? Who wrenched the stick from my hand? Who forced me to retreat? Rivett---one of the officers whom Mr. Shepherd keeps his eye upon, and traces in his attempts to get forward from the moment Mr. O'Connor jumped over the bar until the time of the conflict with Lord Thanet. From the situation where Mr. Shepherd

was

was placed, from that which I am said to have left when I went to attack Rivett, and to which I returned when he had taken the stick from me, is it not clear, that, either in my advance upon the table, in the act of flourishing my stick, in my scuffle with Rivett, or in my retreat, I must have intercepted Mr. Shepherd's view both of Lord Thanet and of the officers?

What does Mr. Serjeant Shepherd further say? He describes Lord Thanet as acting upon the defensive against Rivett's blows, and says, "There was *then* a great deal of confusion;---persons got upon the table." When did persons get upon the table? *When Rivett was striking Lord Thanet.* Observe how this agrees with the evidence of Mr. Warren: After describing Rivett's striking at Lord Thanet, he says, "Mr. Fergusson was *afterwards* upon the table, but not upon the table at any time I have yet spoken to:" and yet Rivett makes me act the strange scene upon the table several minutes *before* he came in contact with Lord Thanet!

But, perhaps, Rivett's evidence will agree better with that of the Solicitor General, and Mr. Clifford. Let us see how this is.

The Solicitor General swears, and it is very material to be noticed, that he kept his eye *particularly* upon Mr. O'Connor and me. "Mr. Fergusson," says he, "at the moment that Mr. O'Connor jumped over the bar, turned himself round, and appeared to me to follow Mr. O'Connor; but I cannot positively say that he did so, because the persons who rushed from the other side of the Court came between me and him; but I recollect, that when they were past, I did not see him."

The Hon. Mr. Clifford says, "When Mr. O'Connor jumped over, they all ran off together; they followed Mr. O'Connor, as it appeared to me:" And afterwards, "Mr. Fergusson, and the rest of them, went off towards the narrow street of Maidstone."

Rivett says, that when he had forced me to retreat, I returned to my former situation; which situation, in his answer to the next question, he describes to be my place at the table. This he describes to have taken place when he was following Mr. O'Connor, who had just jumped over the bar. In this point, then, the Solicitor General and Mr. Clifford agree with Rivett, that at the very beginning of the disturbance, *I left my place at the table.* But what happened then? According to the Solicitor General

General and Mr. Clifford, *I left my place*, and followed Mr. O'Connor towards the *narrow street* of Maidstone: According to Rivett, *I left my place*, jumped upon the table, advanced towards the *main street*, and flourished a stick over his head, to prevent *his following* Mr. O'Connor! The Solicitor General kept his eye upon me, until persons rushed upon the table from the other side. Mr. Clifford swears that I went off towards the narrow street: he says, "I bent myself as far as I could, to see; when "so many people came jumping from the witness-box, "that I was almost quite overpowered:" and then he says, "They all went off to the left hand behind the "cryer's box." Mr. Clifford describes me as one of the persons who so went off: he therefore follows me with his eye farther than the Solicitor General; for he sees me join those who jumped from the witness-box, the same persons whom the Solicitor General describes to have made the rush upon the table by which means he lost sight of me. If the Solicitor General and Mr. Clifford, therefore, speak true, I cannot have attacked Rivett till some time *after* those persons rushed upon the table from the witness-box.

The Solicitor General says, "that those persons went "to the spot where the riot was, and jumped among the "rioters; *all the lights, except those before the Judges, &c.* "were extinguished." It must, therefore, have been *after* the lights were put out, the riot general, and the confusion at its height, that I attacked Rivett; and yet, although it must have been *after* the lights were put out, and the confusion general, yet it was a considerable time, too, if we believe Rivett, *before* he attacked Lord Thanet. Yet, if Mr. Shepherd speak true, the confusion did not take place, nor were the lights put out, till *after* Rivett was striking Lord Thanet. Hear Mr. Serjeant Shepherd himself:—"He (Lord Thanet) held up "his stick with both his hands over his head: there was "then a great deal of confusion; persons got upon the "table, and there was a press, in this narrow pass, of "officers and persons from that side of the court, attempting to press towards the door to which O'Connor had "rushed; and other persons---whom I cannot say---appearing to me to push the other way, as if to prevent them from passing. I saw sticks raised, and fists raised, "by individuals; but who did so, I cannot speak to. "There became *then* a general confusion in that part of the

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" the Court, so that I lost sight of particular individuals ;
 " *the candles were some of them thrown down* ; they
 " were upon the table, and there was a general riot and
 " confusion."

What period, then, of the disturbance can we fix upon, as that at which I made the attack upon Rivett ?

It cannot have been at the beginning of the disturbance, *before* other persons were upon the table, and *before* the lights were put out, and the confusion general ; because, *until* that period, I am traced by the Solicitor General and Mr. Clifford towards the narrow street of Maidstone. It cannot have been *after* other persons were upon the table, the lights put out, and the confusion general ; because the disturbance had not reached that period, according to Mr. Serjeant Shepherd, until Rivett had struck Lord Thanet. It cannot have been *after* Rivett had struck Lord Thanet ; for he swears that he struck Lord Thanet with the stick which he had wrenched from me.---SO MUCH FOR RIVETT.

The evidence of Brooke is, that I *appeared* to have a sword, or stick, or *something*, in my hand. What that *something* was, has been explained by Mr. Maxwell and Mr. Sheridan.

There remains, then, only the evidence of Mr. STAFFORD, who says, that Watson the jailor " seized the flap " of Mr. O'Connor's coat, as he was getting over, &c. : " Mr. Fergusson forced himself in between the two, and " Mr. Watson let go his hold." I shall not appeal to the evidence for the Defendants, by which this fact is flatly contradicted, particularly by Mr. Warren : I shall content myself with observing, that the Solicitor General, who kept his eye particularly upon Mr. O'Connor and *me*, did not see this ; and that that gentleman describes me to have been in my place at the Counsel-table, whereas Mr. Stafford says I was in the Solicitors' seat. The Solicitor General also saw me leave my place---not to go into the Solicitor's seat, but to go towards the narrow street.

Mr. Stafford further swears, that he did not see me until he was upon the table with a drawn sabre in his hands ; and that, *when* he saw me, I was assisting Mr. O'Connor to get over the bar. The Solicitor General says, that this sabre was not drawn until the rush was made from the witness-box ; and Mr. Serjeant Shepherd, until Rivett was striking Lord Thanet. The rush, therefore,

fore, from the witness-box, and Rivett's attack upon Lord Thanet, must have taken place *at the moment* I was assisting Mr. O'Connor to get over the bar. Yet Rivett says that I attacked him---had a scuffle with him---had a stick wrenched from my hand---had returned to my place;---and after all this a few minutes elapsed, and *then he attacked Lord Thanet*. And Mr. Shepherd and the Solicitor General describe Mr. O'Connor as having almost got out of Court, and the whole to have been a scene of confusion *before* Mr. Stafford appeared upon the table with his sabre.

According to Mr. Serjeant Shepherd, the drawing of the sabre by Mr. Stafford, corresponds, in point of time, with Rivett's attack upon Lord Thanet :

But, according to Rivett, my attack upon him (Rivett) *preceded, by several minutes*, his attack upon Lord Thanet :

Therefore my attack upon Rivett *preceded, by several minutes*, the drawing of the sabre by Mr. Stafford.—And again,

According to the Solicitor General, the rush made from the witness-box preceded the drawing of the sabre :

According to the same gentleman, my attack upon Rivett did *not precede* the rush from the witness-box :

Therefore my attack upon Rivett did *not precede* the drawing of the sabre.

And with this I take my leave of the evidence for the Crown.

I shall only further remark, that it was proved upon the trial, that the seat in which I was placed when the disturbance began, was that which had been *allotted for me by the Court*, by whom I was assigned as Counsel for one of the prisoners. It was not a place chosen by myself ; and it did so happen that I, of all the Counsel for the prisoners, was placed in that situation in which I could have been the *least useful* in giving any obstruction to the officers, if any such had been intended. It is a little hard that a Counsel, who is placed by the Court in a situation where he may be enabled to discharge his duty to his Client, should be accused of *studiously placing himself* in one where he may be useful in promoting an Escape.

I HAVE thus stated, and I hope fairly stated, the strength of the evidence against me. I have shewn in what points it is contradicted by the evidence for the Defendants; and I have examined how far, in its different parts, it is consistent with itself. I might have dwelt longer, if it had been necessary, on the unanimous testimony of five gentlemen of character and honour, who describe my demeanour as the most peaceable---my conduct through the whole of the transaction as that of a person whose object was, not to make a riot, but to prevent every thing which was likely to lead to one; and who do, upon their oath, most expressly contradict the leading fact which was sworn against me by a Bow-street Runner, and by him alone!

That there was a riot, is certain; but the question is, who were the rioters? And here let us consider how the charge is laid: it is, that the riot was made whilst Mr. O'Connor was in the custody of the Sheriff of Kent; and in fact upon his trial---for it is expressly stated, that he was not discharged. If so, what right had any officer of justice to attempt, by violence, or otherwise, to take him out of that custody, and to seize him in the presence of those Commissioners who were his judges, and who had given no orders, either for his discharge, or for his arrest? Observe, that the disturbance began with Rivett, before any order was given by Mr. Justice Buller for the detention of Mr. O'Connor; and when that order was given, it was not an order that the Bow-street officers should *arrest him in the face of the Court, before whom he was upon his trial*. What right, then, had Rivett and Fugion (of whom I complained to the Judge) to push forward with noise, and violence, and blows, certainly to the impeding and obstructing the Commissioners, and in contempt of the Court? And for what purpose? to seize Mr. O'Connor, who was then in legal custody, and under the protection of that Court, which had the right and the authority, and the means, of detaining him upon any fresh charge.

We were charged with an attempt to rescue Mr. O'Connor from the custody of the Sheriff of Kent. The obstructions given to the officers are said to be evidence of *that* attempt. I might admit that such obstructions were

were given, and still deny the conclusion---The Bow-street officers were not acting in the aid of the Sheriff: they were, on the contrary, as it appears to me, attempting, illegally, to take a prisoner out of the custody of the Sheriff; and those who obstructed them, if there were any who did so, so far from having attempted a rescue, may be said to have been acting *in the aid* of the Sheriff. But such arguments are not necessary for me; nor do I insist upon them. I am perfectly willing to leave my case as it stands upon the evidence on both sides, weighed, compared, and appreciated by any impartial man.

Upon that evidence, the Jury found me guilty *of all the charges* laid in the Information; that is, not only of *every thing* which was sworn to by *any one* against me, but even of that of which there was *no evidence even attempted to be given*.

I appeared, therefore, before the Court of King's Bench, to receive judgment---for what? as the Court seemed to think, for the enormous misdemeanour of STRIKING IN A COURT OF JUSTICE! Let any one peruse the evidence; and he will find, that THERE IS NOT EVEN AN ATTEMPT TO PROVE THAT I STRUCK A BLOW.

The Attorney General was directed by the Crown to enter a *nolle prosequi* upon the three first counts of the Information; and he thereby only anticipated the justice of the Court of King's Bench, which would not have pronounced judgment for an offence, of which there appeared no evidence against me, upon the notes which the learned Judges themselves took upon the trial.*

* It

* If it be objected to me, that being engaged in the same unlawful design, the act of one is the act of all; I answer the objection with this case from the Year Books.

MICH. TERM, 22 ED. III.--Note, That a Knight and an Esquire were indicted, that before Robert Thorpe, a Justiciar assigned, &c. one J. made an affray, wherefore Thorpe attached him; upon which the Knight and the Esquire made contention with Thorpe, by which J. escaped, &c.; and the jury were to inquire if the Knight and the Esquire were there in order to rescue J. from the attachment, which they said Yea, and that the Esquire drew his sword to have struck Thorpe: whereupon they were arraigned, and put themselves upon the mercy of the King. Shard (Justiciar), to the clerk: "Enter it in the roll, " and that they confess this." Shard to the Knight and to the Esquire: "Since that you came to rescue him attached by the Justiciars of the King, which is his attachment demesne in
" law,

It was my intention, if the Attorney General had not been directed to enter a *nolle prosequi* upon the three first counts of the Information, to have applied to the Court for a new trial, upon the ground that a verdict had been given against me upon those counts, *not contrary* to evidence, but *without* evidence at all. If I had been unsuccessful in this application, I meant to argue, that the punishment was *not* specific; and if the opinion of the Court had been against me upon this point also, I should have moved to arrest the judgment; and I think I should have shewn, that if the offence charged in the Information did in fact amount to that which is punishable with forfeiture, with perpetual imprisonment, and with the LOSS OF HAND, that then *I had not been tried by the LAW OF THE LAND*, and that the Record was insufficient to support ANY JUDGMENT.

I come, therefore, now to consider,

THE POINTS OF LAW:

And the first is, Whether the offence be so laid as to infer the specific judgment?

The cases in the Books cannot throw much light upon the subject, as none of them give the words of the indictments, and there are only two which enter at all into the reasons of the judgments. I allude to the two cases in Croke.---The indictments, of which I have copies, run thus:

T. TRIN. 37 ELIZ. ROT. 3.---Carye was indicted, for that he, at Westminster, in *Magna Aula Placitorum ibidem Curiis dictæ Dominae Reg. (videlicet) the King's Bench and Common Pleas, eadem Aula adtunc apertis existentibus et justiciariis dictæ Dominae Reg. in Curiis illis adtunc, et ibidem præsentibus et judicialiter sedentibus, &c. vi et armis, (videlicet) eum gladio extracto in quendam Willielmum Venables, &c. insultum fecit ea intentione ad ipsum Willielmum Venables interficiendum, &c. in contemptum, &c. et contra formam divers' statuti*.---He was found guilty, and was adjudged to pay a fine of 100 l. and to be imprisoned for life; and as Croke reports it, Popham, C.

"law, and made contention, by which he escaped, the Court
"awards that you be disherited, and have prison for all your
"days, that is, to wit, the Knight at the Tower, and the Es-
"quire at Newgate; and THAT THE HAND OF THE ESQUIRE
"WHICH DREW THE SWORD BE CUT OFF."---This case re-
quires no comment.

C. J. said, "Although it were out of the view of the Court (which appeared in evidence), yet if the indictment had been, as it ought to have been (and as we have precedents in Edw. IV.), *Coram Domina Regina*, the judgment should have been that his right hand should have been cut off."

TR. 10 CAR.---Waller was indicted, for that he, at Westminster, *infra Palatium Domini Regis* Juxta Magnam Aulam Placitorum, *ibidem* vi et armis super quendam Thomam Reignold militem Curiis ipsius Dominae Regis, (scilicet) Curia ipsius Domini Regis coram ipso Rege, Curia cancellariae, et Curia de Banco in praedicta Magna Aula Placitorum praedictorum apertis et justiciariis ipsius Domini Regis in Curiis praedictis adtunc, et ibidem praesentibus et judicialiter sedentibus, &c. adtunc, et ibidem insultum et effraiam fecit, et praedictus Willielmus Waller super ipsum Thomam Reignold adtunc et ibidem gladium suum evaginare conatus fuit, ad ipsum Thomam Reignold militem, cum gladio praedicto adtunc et ibidem percutiendum in contemptum, &c. et contra formam divers' statut'.---He was found guilty; and, as Croke reports it, "Because the Indictment was not that he did it in the presence of the Justices NOR in the presence of the King, all the Judges agreed that the judgment of the cutting off his hand should not be given."---He was fined 1000 l. and imprisoned during the King's pleasure.

Carye's offence is drawing a sword with an intent to kill, IN the Great Hall of Westminster, the Courts open and sitting in the said Hall, and the Justices present in the said Courts, which offence seems to be sufficiently laid in the *presence of the Justices*.---Yet the specific judgment was not passed, as it is said, because it was not alledged to have been committed *coram Domina Regina*.

Waller's offence is making an assault and affray, and attempting to draw his sword, with an intent to strike, in the *King's Palace*, NEAR the Great Hall of Westminster, the Courts open and sitting in the same Hall, and the Justices present in the said Courts. This could not be said to be laid in the *presence of the Justices*, because the offence was alledged to have been committed *out of the Hall*.---The specific judgment was not passed, as it is said, because it was "neither in the presence of the Judges, *nor* in the presence of the King."

The opinions of the Judges in the two cases, it is evident, cannot be reconciled; but which of them carries with

with it the highest authority, it is not for me to determine. If we had not been furnished with the *reasons* of the Judges in either case, and that it had been left to us to draw our own conclusions by comparing the judgment in each case with the indictment on which it was founded, we should have reasoned thus :

In the one, there is a sword drawn in Westminster Hall, and an assault made in the presence of the Justices, and we can find no reason why judgment was not passed to lose the hand, BUT this, that the offence is not charged to have been committed *coram Domina Regina*. These words are, therefore, of absolute necessity.

In the other, we can find many reasons why this judgment might not have passed. 1st, There is no sword drawn. 2dly, The offence is not committed in Westminster Hall, and consequently, 3dly, Not in the presence of the Justices. 4thly, It is not laid *coram Domino Rege*. For want of one, or several, or all of these requisites, it might have been, that the judgment was not pronounced; and we should have been inclined to believe, that it was *parly*, at least, because the indictment wanted these words of absolute necessity, *coram Domino Rege*.

But giving full weight to the case in Cro. Car. to what does it amount?---That this offence, if it had been alledged to have been committed before the Justices in *Westminster Hall*, and among others (which is very material) the Justices of the King's Court *coram ipso Rege*, who are named in the indictment, and who must therefore be understood to be of the Justices of whose presence there is question in the opinion of the Court---that this offence, so committed, would have been punishable with the loss of hand.

It is worthy of remark, that neither of the offences charged in these indictments, is strictly the offence of Striking in a Court of Justice; and they could therefore, perhaps, neither of them have been fairly cited as authority in this case. Both of the indictments conclude "against the form of the statutes."---Neither of them, however, can be brought within the statute of Hen. VIII. against striking in the King's palace, there being no blood drawn. They, perhaps, both come within the statute 2 Ed. III. c. 3. whereby it is enacted, that no one "be so hardy to come before the King's Justices, or other of the King's ministers, during their office, with force and arms, nor bring *no force in affray of the peace*, nor

“go, nor ride, armed, by night nor by day, in fair’s,
 “markets, nor *in the presence of the Justices*, or other
 “ministers, &c. upon pain to forfeit their armour to the
 “King, and their bodies to prison at the King’s pleasure.”

If the Judges in Waller’s case had made it a question, whether the pains of this statute could be inflicted, because the offence was not, perhaps, strictly laid in the presence of the Justices, I could have understood it; but I confess I am quite at a loss to discover how Sir William Waller’s offence could ever have been punished with the loss of hand, however it had been laid.

In Carye’s case, indeed, there is a weapon actually drawn, and an assault made with that weapon, in the hall of the King’s palace, where the King’s Justices are present; but in Waller’s case there is no weapon drawn, no blood shed, no blow actually given; and all that is charged is an assault and affray in the King’s palace.

I think the opinion of the Judges in Waller’s case may be evidently traced to Br. Ab. tit. Paine 16. which I take clearly not to be law. It is in these words: *Vide, cesty que fist affray in presens des Justices, et ceux que luy rescue ou trahie weapon serra disherite, et imprison in perpetuum, et lour maines Coupes titulo For. in Fitz. 21.* Now, in turning to Fitzherbert, we find that the case which he cites is that of the Knight and Squire from the Year Books, which decides nothing of the kind. It decides, that he who makes an affray in the presence of the Justices, *and* rescues, *and* (not *or*) **DRAW A WEAPON** upon a Judge, shall lose his hand, and have perpetual imprisonment, &c.; but that he who makes the affray, and rescues, but does *not* draw a weapon, shall *not* lose his hand.

I observe that the word “affray” is the very word used in Waller’s indictment; and I am almost inclined to think, that this passage in Bro. Abr. did in fact mislead the Judges in the opinion which they gave upon that occasion, if that reported in Croke be really the opinion given; although, at the same time, I do not admit, that that opinion, however well-founded, would have been at all decisive in this case, which is a case of striking before Justices of Oyer and Terminer, and *not* in the King’s palace.

This question is therefore entire: and it is the question which I now mean to discuss.

My

My Lord Coke says, that the specific judgment shall be given, "If, before Justices of Assize, or Oyer and Terminer, and within view of the same, a man doth strike a Jurour or other," &c. 3 Inst. 140. The cases cited in the margin of my Lord Coke in support of this opinion, are, Fitz. Jug. 174. Coro. 280. Dyer 188. and Bellingham's case, 2 Jac.---Let us see whether they will bear him out in the opinion.

The case in Fitz. Jug. is put shortly thus: *Nota que N. C. fuit endite en Banke le Roy de ceo que il en presens des Justices ferist (struck) un Jurour.* But this was a striking in Westminster Hall; and the Record, which is in the Crown Office, states the affray to have begun in the King's Court, *coram ipso Rege*, and that the blows were given by the door of Westminster Hall, *coram Johanni de Malton et sociis suis*, Justices of that Court.---19 Ed. III. Rot. 55.

The case in Fitz. Corone is in these words: *Homme fuit endite et arraigne de ce qu'il ferist un home en le Sale de Westminster.*---Both the other cases are of striking in Westminster Hall, *sedentibus Curiis*. The authorities, therefore, cited by my Lord Coke, decide nothing as to the offence committed *elsewhere* than in Westminster Hall.

I therefore take a distinction between a striking in Westminster Hall, which is the King's palace, and in the presence of that Court in which he is supposed to administer justice in person, the Court *coram ipso Rege*, and the like offence committed in other places, and before other Courts, as Courts of Oyer and Terminer or Gaol-delivery. In this distinction I am supported by no mean authority; for STAUNFORD, in observing upon the above case in Fitz. Coro. says, "*Quære, si issint ser-ra, s'il luy ferist forsq' en le Palays de Westminster.*" "*Quære, if so shall be, if he strike him except in the Palace of Westminster.*" S. P. C. 38.

Lord Coke speaks generally of Justices of Oyer and Terminer, and says that striking in the presence of such Justices is punishable with the loss of hand: and yet in the next page he cites Holbrooke's case, which was, in fact, (although he does not say so) a commission of Oyer and Terminer, as appears by the Record in the Crown Office.

TERM HIL. AN. 3. ED. III. ROT. 116.---*Johannes de Londham, Robertus de Insula, Thomas de Latem, et Will. Giffald, assignati fuissent per commissionem Domini Regis*

Regis, in Suffolk, ad audiendum et terminandum omnes transgressiones in eodem Comitatu factas, &c.; and there came Thomas de Holbrooke, who, having raised a noise and clamour in the Court, was ordered to be committed; and who, upon that, "*ipsi Johanni dixit quod ipse mentitus fuit, et ipsum cepit per Gulam, et jactabat ultra capita clericorum, &c.* Et quia idem Thomas coram concilio cognovit, quod prædictum Justiciarium Domini Regis dementitus fuit, et manus violenter imposuit, &c. committitur prisonæ Turris London ibi custodiendum ad voluntatem Domini Regis.---This was a commission of Oyer and Terminer, though not for the trial of treason and misprision of treason.

But there are precedents, in the Crown Office, of assaults and strikings, even in Westminster Hall, in the presence of the Justices, but where the sitting of the King's Court, *coram ipso Rege*, is not particularly mentioned, and where the punishment was arbitrary and not specific.

T. PASCH. 31 ED. III. ROT. 85.---*Cotina de Coureste cum lapidibus in Aula Westm. IN PRÆSENTIA JUSTICIARORUM insultavit Thomas de Shene, and damages 20s.*

T. TRIN. 19 ED. III. ROT. 77.---*Apud Westm. Thomas de Whiteshegh percussus in pectore cum quodam Bodekins, IN PRÆSENTIA JUSTICIARORUM, per Willielmum de Anlingham Coteler---and a fine of 5 marks.*

In the following cases, judgment to lose the hand was given.

T. TRIN. 1 ED. IV.---*Johannes Davy apud Westm. in magna Aula Placitorum Domini Regis juxta Barram Banci ipsius Regis, CORAM IPSO REGE, Curiis ejusdem Regis (videlicet) Curia ipsius Regis, CORAM IPSO REGE, Cancellariæ et Communi Banci apertis ac justiciariis Domini Regis in Curiis, &c. præsentibus, vi et armis, &c. in Ricardum Hayward insultum fecit, &c. et cum pugillo suo, &c. PERCUSSIT, &c.*---This is the case put in Dyer, 188.

T. HIL. 15 and 16 CAR. II.---*Willielmus Bockenham apud Westm. in magna Aula Placitorum in et super quendam Robertum Harlestone, &c. Curia Domini Regis Cancellariæ, Curia Domini Regis, CORAM IPSO REGE, et Curia Domini Regis de Banco apertis, &c. et Justiciariis in Curiis, &c. præsentibus, &c. vi et armis insultum fecit, &c. et super faciem, &c. PERCUSSIT, &c.*

In these cases the offences were committed in Westminster Hall; but in the following case, where the offence

fence was not committed in Westminster Hall, the punishment was discretionary.

APUD EBOR. T. MICH. 6 ED. III. ROT. 30. *Adam de Everingham de Rocheley attachiatus fuit, &c. p. eo quod Johannem de Rocheley venientem ad Curiam Domini Regis ad persequendum, &c. insultavit, &c. et manu sua, &c. percussit.*---He was found guilty; *et quia transgressio et contemptus prædicti perpretati fuerunt in præsentia Justiciarorum*, the judgment was, that he should be imprisoned during the King's pleasure.

Considering, therefore, the whole of these cases, and believing, as I do, that no precedent could have been produced to meet the present, I think I may conclude, that the Court of King's Bench would not have felt itself called upon to pronounce the specific judgment.

But there are other, as I think, fatal, objections to the MANNER in which the offence is charged.

First, the striking is not laid as an entire and substantive charge; and could not have supported a separate and distinct judgment from the other offences with which it is blended in the Information.

This objection is peculiarly applicable to the first and third counts.

In these counts there is a riot charged; and also that the Defendants did *unlawfully, riotously, routously, and tumultuously, in and upon, &c. make an assault, &c.*---Here I say that the riot is the substantive charge; and that the assault is only a part or aggravation of the riot.

Put this case, that the riot had not been laid "with divers others," I submit that no judgment of any kind could have passed upon the Earl of Thanet and myself---not upon the riot, because two cannot make a riot; nor upon the assault and battery, for these are a part of the riot, and are so charged.---I reason thus upon the authority of my Lord Holt, in the King v. Heapes, Salk. 593, which is thus:

"Indictment, that the Defendants *riotose et routose et illicite assemblerunt, et sic assemblati existentes riotose et routose insultum fecerunt in quendam J. Russel, &c.* Upon Not Guilty, the Jury found two Defendants guilty, and acquitted the rest: and it was moved in arrest of judgment, that two cannot make a riot, and therefore cannot be guilty of a riot; and that all are acquitted by this verdict.

dict. On the other side it was said, that the assault and battery is charged in the indictment as well as the riot; and two Defendants may, as they are found, be guilty of that."

Sed per HOLT, C. J. "A riot is a SPECIFIC OFFENCE, and the battery is not laid as a charge of itself, but as a PART OF THE RIOT; FOR THE RIOTOSE ET ROU-TOSE RUNS THROUGH ALL, and is ascribed to the battery as well as to the assembly. The consequence is, that these Defendants being discharged of the riot, are discharged likewise of the battery, and no judgment can be given; and judgment was arrested."

So in our case, I argue, that, being convicted of a riot, "with divers others," and the battery being charged as a part of the riot, we could not have had a separate judgment for the battery; and that therefore no other judgment could have been given than the JUDGMENT FOR A RIOT ONLY.

In the second count, as there is no riot charged, this reasoning cannot apply to it; but upon this count, as I have already observed, there was no evidence given of a battery: and therefore the Court would not have proceeded to give judgment upon it, but would have ordered a *new trial* to be had, the objection not being good in *arrest of judgment*.

In the second count, as well as in the first, there is charged an attempt to RESCUE MR. O'CONNOR.

I come now to shew, that the Court could not have pronounced judgment upon *this part* of the charge; for that, under the circumstances stated in the Information, it does not appear that there could be such an offence as a rescue of Mr. O'Connor.

The Information sets forth, that Mr. O'Connor, being in the custody of the Sheriff of Kent, was tried by a Jury, and by them found NOT GUILTY of the premises charged upon him; and that, "before any order or direction had been made or given by the same Justices and Commissioners above-named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and before the said Arthur O'Connor was discharged from the custody of the said Sheriff," &c. the Defendants did, "with force and arms," &c. "at-tempt and endeavour to rescue the said Arthur O'Connor"

"nor from and out of the custody of the said Sheriff," &c.

Now what I submit is, that this offence is not sufficiently charged; and that it should have been averred, that *an order was given to DETAIN*, or that a warrant was served upon Mr. O'Connor, and that he was so detained or arrested, upon FRESH PROCESS.

The whole question is this---Has the Sheriff a right, and is he bound, in every case, to detain a prisoner in his custody, after such prisoner is acquitted, until the Judge before whom he has been tried shall have given an order for his discharge? or, are there not, independent of such order of the Judge, certain rules of law, and provisions by act of Parliament, whereby the Sheriff, upon the acquittal of a prisoner, is bound to proceed with respect to the discharge of such prisoner?

I do not speak of those cases in which such prisoner is arrested or detained *at his acquittal* upon *fresh process*, which is not the case here, so far as we can learn from the Information; and I need not say that such a material fact cannot be taken by inference or intendment.

In the first place, then, I find in my Lord Coke, 2 Inst. p. 53. that, "If a sheriff or gaoler detain a prisoner in the gaol *after his acquittal*, unless it be for his fees, this is false imprisonment."

Then by the act 14 Geo. III. c. 20. it is provided, that "Every prisoner who now is, or hereafter shall be charged with felony or other crime, or as an accessory thereto, before any court holding criminal jurisdiction within that part of Great Britain called England and Wales, against whom no bill of indictment shall be found, or who on his or her trial shall be **ACQUITTED**, or who shall be discharged by proclamation for want of prosecution, shall be **IMMEDIATELY** set at large in **OPEN COURT**."

But it may be said, perhaps, that this regards felony, and not treason; and that the words "other crime" cannot be taken to extend to a higher crime than felony.

Besides that taking up this narrow ground would be admitting my general proposition, there is this short answer to the objection:---The generic term "felony" comprehends treason; and although, in a statute enacting a penalty, it might not be so construed, yet, in one like this, which gives a remedy, it would. But it may further be objected, that we learn, both from the

the title and preamble of this act, that it was framed for a particular purpose; to give relief to prisoners who might be detained for their fees.---Be it so--- It is giving them relief in the only case in which they could want relief; in the only case in which the sheriff or gaoler could legally detain them after their acquittal; namely, for their fees. But is it necessary to argue, that in no statute, above all, in no remedial statute, can the title or the preamble, which may, and usually do explain the general scope and intent of an act of Parliament, be admitted to restrain the *express* provisions of its enacting clauses. My Lord Hale, in his History of the Common Law, observing upon the statute of Henry IV. against appeals in Parliament, says, "Though the petition," (which in the old statutes, it may be observed, was ever more extensive than any title or preamble can be,) "expresses only treason and felony, yet the act is *general* against all appeals in Parliament; and many times the purview of an act is larger than the preamble or the petition."

So in this case, the act 14 Geo. III. is general with respect to all persons who, charged with felony or other crimes, shall upon their trial be *acquitted*; and it enacts that all such persons shall be "IMMEDIATELY set at large in OPEN COURT:"

Surely, then, if a prisoner be indicted for an attempt to escape after he is acquitted, or if another person be indicted for having assisted him in that attempt, it is at least incumbent upon those who indict to set forth the cause for which he was detained, and by reason of which he was not entitled to the benefit of this statute. It is necessary, that the Court may be enabled to ascertain that the indictors have not gone upon insufficient premises.

But the cause why he was detained, it may be said, does appear upon the Information, namely, that the Court had given no order for his discharge.

Is it then contended, that no prisoner shall have the benefit of this act unless the Judge chuse to give his order for that purpose; or, in other words, that the Judge can dispense with the act of Parliament? What mean these words, "Shall be immediately set at large in OPEN COURT?" Do they mean any thing, or nothing; or do they mean any thing, or nothing, just as the Judge pleases? How is a prisoner ever to have the advantage of being set at large in "open Court," if the gaoler can take him back

prison until he shall have had an opportunity of having it certified to him that there are no other warrants against him, either on the part of the public, or of some private prosecutor."

What if the Judge neglect to give this order? The prisoner has already received the verdict of his country, but he is to be detained until he shall have received the verdict of the Judge too.---Is he to be kept in prison one---two---three---six months? How long does the power of imprisonment on the part of the Judge last? If I can put any case in which this might be false imprisonment, (and are there not many?) I put a case in which it would be no offence in the prisoner to attempt to escape, nor any in a stranger to attempt to rescue him.

It cannot be supposed, that I deny the power of the Judge, upon sufficient grounds, to have detained Mr. O'Connor; or the authority of an officer, upon a lawful warrant, to have arrested him the moment of his acquittal. But nothing of this appears on the Information. What should have been *averment*, may have come out in *evidence*; but that will not help the Record. For any thing that appears in the Information, Mr. O'Connor either was, or ought to have been *at large in open Court*, for he was *acquitted*. The custody of the Sheriff was at an end, a prisoner being "delivered by due course of law," when the Jury have "well and truly tried and true deliverance made between the King and the prisoner."

But I conceive further, that in this Information the terms of art are wanting, necessary to constitute the offence of striking in a Court of Justice.

The words used in describing it are, "beat, bruise, wound, and ill-treat," the form of a common battery. There is wanting the term "percussit," or "struck;" and it should also have been charged to have been done "maliciously." The part of the body on which the blow was given, and the particular hand or weapon with which it was given, I take it, are equally essential.

There are, I believe, in the Crown Office, only two indictments which will be found exactly to meet the present case. Those of Carye and Waller were, as I have already observed, for another offence.

The two to which I allude are,

IN DAVY'S CASE, 1 ED. IV.---The words there are,

Vi

Vi et armis, viz. pugillo et baculo in præfatum Ricardum insultum fecit, ipse que Johannes Davy prædictum Ricardum cum PUGILLO SUO MANUS SUÆ DEXTRÆ super faciem suam PERCUSSIT, et cum quodam baculo quem idem Johannes Davy tunc tenuit in MANU SUA DEXTRA præfatum Ricardum SUPER CAPUT SUUM violenter et MALITIOSE similiter PERCUSSIT, &c.

IN BOCKENHAM'S CASE, 15 AND 16 CAR. II. the words are, *Insultum fecit, et ipsum Robertum Harlestone adtunc et ibidem, vi et armis SUPER FACIEM ET CAPUT SUUM, MALITIOSE et violenter CUM PUGNO SUO DEXTRO adtunc et ibidem PERCUSSIT, ac ipsum Robertum adtunc et ibidem verberavit, vulneravit, et maletractavit, &c.*

These precedents, at such a distance of time, but agreeing so entirely, the one with the other, seem to be conclusive as to the form of an Indictment for this offence. In the necessity of the word "malitiose," we are further confirmed by the analogy of the statute of Hen. VIII. affixing the penalty of the loss of hand to a striking in the King's palace, attended with the loss of blood. The offence is there termed "MALICIOUS striking, by means whereof blood is shed."

There is this further to be observed, that in Bockenham's case (and it is most material indeed) the words "verberavit, vulneravit, et maletractavit," "beat, wound, and ill-treat," are, in fact, used, but not so as to dispense with the term of art "PERCUSSIT."

BUT I shall now take up the subject in a very different point of view. I shall suppose that there is nothing in any objection which I have yet urged ;---I shall admit, for the sake of argument, that the battery charged in the three first counts of the Information is so laid as to constitute that offence which is punishable with the loss of hand, &c.

I think I can shew, that, in *that case*, the Record was insufficient to support ANY JUDGMENT ;

1st, Because offences which infer punishments of a different nature cannot be included in the same Information or Indictment :

2dly, Because, in the trial of an offence of which the punishment extends to the loss of limb, the King's Attorney General cannot proceed by Information *ex officio*.

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As to the first point, it was formerly held in misdemeanours, that two offences could not in any case be joined in the same Indictment; and upon this principle was decided the case of the *King v. Clendon*, 2 Stra. 870, 2 Lord Raym. 1572, for an assault upon two persons, where judgment was arrested;---so was the case of the *King v. Roberts*, in Carth. 226: And, per Holt, C. J. "A single offence ought to be laid and ascertained, &c. because each offence requires a separate and distinct punishment, according to the quantity of the offence."

It is true, that in the *King v. Benfield and Saunders*, 2 Bur. 984, the case of the *King v. Clendon* was said not to be law: and it was held, that two libels on two persons might, under certain circumstances, be joined in the same Information: but this point was more fully discussed in a late case---that of the *King v. Young and others*. 3 T. R. 101; and seems to have been there settled on the soundest principles.

This was an Indictment for obtaining money under false pretences; and the transaction which gave rise to the false pretence was differently stated in the different counts, so as not to appear necessarily to be the same transaction. Among other points which were urged by the Counsel for the Defendants in arrest of judgment, was this---that two distinct offences could not be included in the same Indictment or Information; and the cases in *Strange*, Lord Raymond, and *Carthew*, were relied upon. On the other side, the case in *Burrow* was cited; and per Lord Kenyon, "The objection would be well-founded, IF THE LEGAL JUDGMENT ON EACH COUNT WAS DIFFERENT; it would be like a misjoinder in civil actions: ---But, in this case, the judgment on all the counts is PRECISELY THE SAME; a misdemeanour is charged in each." This, to make his Lordship's opinion consistent, must be understood of a misdemeanour on which the legal judgment is *not* different.

Now, what is the case upon this Information? In one count there is charged a riot without any aggravation, and which the Court might punish at their discretion with fine and imprisonment: in other counts there is charged (as we are to suppose) an offence, inducing the highest punishment which the law knows, short of death---an offence for which the party must lose his hand, suffer perpetual imprisonment, and which is followed by the forfeiture of goods and chattels, and the profit of lands during life; and in the pronouncing of which sentence the

Court

Court has no discretion. The question is, whether the *legal judgment* on these counts be different or the same? The answer will tell us whether or not they can be included in the same Information or Indictment.

I am, secondly, to shew, that,

In the trial of an offence of which the punishment extends to the loss of limb, the King's Attorney-General cannot proceed by Information *ex officio*.

And I have first to observe, that the law of England, in the scale of offences and of their punishments, has ever classed by themselves those which affect life or limb. We find, therefore, very early, that of such offences the King's Courts could alone take cognizance, and that judgment of life or limb could only be given in these Courts. Such offenders were to be imprisoned "in
"prisona ipsius qui tales posset in Curia sua judicare,
"sicut Dominus Rex qui potestatem habet judicandi DE
"VITA ET MEMBRIS."---*Bracton de Corona*.

In our ancient statutes the same distinction is preserved. For instance, in that "DE FRANGENTIBUS PRISONAM," 1 ED. II. it is provided, "quod nullus qui prisonam
"fregerit subeat judicium VITÆ VEL MEMBRORUM, nisi
"causa pro qua captus et imprisonatus fuerit tale judi-
"cium requirat," &c. ; and therefore an Indictment for so breaking prison must set forth a commitment for such an offence as is punishable with the loss of life or limb : and in 5 Edw. III. we find, "That no man from henceforth
"shall be attached by any accusation, nor forejudged of
"LIFE OR LIMB, &c. against the form of the Great
"Charter, or the Law of the Land."

In the trial, too, of offences which go to life or limb, there are many circumstances common to both, and which are not applicable to other criminal cases. Thus, "In criminal cases of *life or member*, the Jury cannot
"give a privy verdict, but they must give it openly in
"Court." 1 Inst. 227, b.---And there we also find, that
"A Jury sworn and charged in case of *life or member*,
"cannot be discharged by the Court, or *any other*, but
"they ought to give a verdict." The consequence is, that the prisoner cannot be tried again for the same offence. This last maxim will be found very material in this discussion.

It is an admitted principle of law, that the King cannot be nonsuited ; for he is ever supposed to be present in Court;

Court : and this applies to criminal as well as civil cases. But in the trial of misdemeanours by Information for the King, his Attorney-General may enter a *nolle prosequi*, which operates as a nonsuit. He may do it at any stage of the proceedings---even after verdict, and before judgment : he may do it at the trial, before evidence is called ; or he may do it after evidence is called, and the *Jury charged* ; and the Jury shall *not* proceed to a verdict. Then what becomes of the above principle, that a Jury sworn and charged in a case of life or member cannot be discharged, &c.?---Here is a case of limb, in which the Jury are sworn and charged, but do *not* proceed to a verdict---Why ? Because the Attorney-General enters a *nolle prosequi*, by which he reserves the right to try the Defendant again.---Is it not an evident consequence, that the proceeding by Information does not apply to such cases ?

It will not be said, that, in a case of life, the Attorney-General can proceed by Information. The question is, whether he can so proceed in a case of limb ? I shall shew that they have both been *equally*, at all times, excepted from that species of process.

Whether Informations were first given by statute, or whether they were at common law, it is not necessary here to inquire. What I shall endeavour to shew is, that, neither by the provisions of the one, nor by the principles of the other, they could ever have been extended to an offence involving in its punishment the loss of limb.

In the first place, I think I hazard nothing in asserting, that there is not a SINGLE PRECEDENT to be found, by which it appears that such an offence was so tried. I know there are none in the books truly stated ; for the case of Bockenham, which in Keble and Levinz is said to be by Information, is, in fact, by Indictment, as appears by the Record in the Crown-Office.

I believe the whole learning on the subject of Informations, or at least every thing which can be said *for* them, is to be found in 1 Shower 106, in an argument intended to have been made by Sir Bartholomew himself, in the case of the King *v.* Berchet and others, for a riot. It is one of the ablest, and certainly the most elaborate argument of that eminent lawyer. He seems to have had access to every Record : and he has produced precedents, of one kind and another, of Informations, for every offence in
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the shape of misdemeanour, from *præmunire* down to the most trifling trespass ; but none for this offence, nor for any offence punishable with the loss of limb.

It was argued, in that case, by Sir Francis Winnington for the Defendants, that by the statute 11 Hen. VII. c. 3, Informations were given ; and that the statute being repealed by 1 Hen. VIII. c. 6, Informations were abolished with it. But it seems to have been held, that the statute of Hen. VII. was only meant to extend, to Justices of Assize and Justices of Peace in the counties, the same power of trying by Information which was before by common law inherent in the Court of King's Bench. The words of the act Hen. VII. may therefore explain to us what was the nature of this power, at common law, of trying by Information in the Court of King's Bench.

It cannot be supposed at least, that in that statute, which was made for the purpose of oppression and extortion, any offence would have been omitted, which was before legally the object of that species of prosecution in any Court.

In the modern editions of the statutes, according to a very inconvenient practice, an abstract only is given of this act, being repealed. In Ruffhead's Statutes, the abstract is in these words : " The Justices, &c. upon Information for the King, shall have authority to hear and determine all offences and contempts (*saving treason, murder, and felony*) committed," &c.---The inaccuracy of this abstract in a very material point, and which makes indeed the whole of this case, will appear by a reference to Rastall's edition of the Statutes, where the act is given at length.

It first recites, that many statutes had been made for punishing riots, unlawful assemblies, and a variety of other offences enumerated in the act : And, " for so much that, before this time, the said offences, &c. might, nor as yet may be conveniently punished by the due order of the law, except it were first found and presented by the verdict of twelve men thereto duly sworn," &c. it enacts, that the Justices of Assize and Justices of Peace, " upon information for the King before them to be made, have full power and authority to hear and determine all offences and contempts, &c. ; PROVIDED ALWAYS, that any such information extend *not* to treason, murder, or felonies, *nor to any other*

"other offence, wherefore any person shall lose life or member." In my Lord Coke, in a marginal note upon the part of the statute, it is said, "But it extended to *præmunire* and misprision of treason." 4 Inst. 42.

We find, then, that even under this law of oppression and extortion, for the advising and executing of which, Empsom and Dudley suffered, this offence could not have been tried.

Let us next see, whether it could have been tried in the STAR-CHAMBER; that Court which assumed such an extensive jurisdiction in the trial of offences by Information; and so exercised that jurisdiction as no Court will ever dare again attempt the like in England?

The Court of Star-Chamber took cognizance of "oppression and other exorbitant offences of great men, whom inferior Judges and Jurors (though they should not) would, in respect of their greatness, be afraid to offend; bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersion of false and dangerous rumours, news and scandalous libelling, false and partial misdemeanours of Sheriffs and Bailiffs of liberties, frauds, deceits, *great and horrible riots*, routs and unlawful assemblies, single combats, challenges, duels, and OTHER *heinous and extraordinary offences and misdemeanours*." 4 Inst. 63.

Let any one attempt to make out a more formidable catalogue of offences which the Court of King's Bench has or ever had the power to try, or the Attorney-General to prosecute, by Information *ex officio*.---Yet we find, that, enormous as was this jurisdiction of the Star-Chamber, it had these limits: "It extendeth not," says my Lord Coke, 4 Inst. 64, "to any offence that concerns the life of man, or OBTRUNCATION OF MEMBER, the ears only excepted, and those only rarely, and in most heinous and detestable offences."

Upon the abolition of the Court of Star-Chamber, it is said, that the common-law authority of the King's Bench, of trying by Information, which authority had been almost extinct, "was again revived in practice;" 4 Com. 310; and that into the last Court "reverted all that was good and salutary of the jurisdiction of the Star-Chamber," 4 Com. 266: but it has never been pretended that it succeeded to a *higher* jurisdiction in the trial of offences by this process of Information. "This Court,"

says

says my Lord Holt, "hath all the *lawful* power which "the Star-Chamber had," Com. 142: And again, "The "Court of Star-Chamber was taken away because the "crimes were punishable here," 5 Mod. 464. What crimes?---crimes of which the punishment does *not* extend to life or *limb*, which I maintain cannot at this day, and never could at any time, be tried in England, "except they were first found and presented by the verdict "of twelve men thereto duly sworn."

I conclude, then, that the Court of King's Bench could not proceed to judgment against any one convicted of such an offence, upon an Information filed *ex officio* by the King's Attorney-General. *

I have now done. It was incumbent upon me, as far as in me lay, to satisfy the Public, or, rather, that small portion of the Public whom any thing which regards me can interest, that I swore nothing rashly, when, under that sacred solemnity, I declared, that I was innocent of the whole and every part of the charge of which I had been convicted. I leave my case, then, in the hands of those for whom these observations were intended, particularly of those whose good opinion must ever be dear to me,---the Members of that Profession to which the humble labours of my life are to be directed. On the questions of Law, more might have been said; but I fear that I have been tedious enough on a subject which cannot interest the Public, and which, even to the Profession, is perhaps more an object of curiosity and speculation, than of use. It is not likely that the case will ever again occur, unless when it shall happen, that the Officer of the Law who prosecutes, the learned Counsel who defend, and the Jury of the Country who try, shall know as little as the Person who is tried, what the offence is with which he stands charged.

I shall only farther observe, that if the offence laid in the Information under which I was tried, be really of that most serious kind, which some have supposed, I cannot do justice to the Noble and Learned Judge who presided at the trial, without believing, that, upon that occasion, even his knowledge, accurate and extensive as it is, must have been at fault. Had it been otherwise, his
Lordship

* To do the late Attorney-General justice, he has not claimed the power of filing any such Information.

Lordship would have been induced, in fairness to the Defendants as well as to the Jury, to have stated, what were the different punishments annexed to the different counts; and he would have told the Jury, that if they found a verdict of Guilty upon some of the counts of the Information, they would subject the Defendants to perpetual imprisonment, their estates to forfeiture, and their bodies to mutilation!---a judgment, at which the humanity of a British Jury would have shuddered.--- Little, indeed, did this Jury imagine that their verdict might revive the obsolete provisions of this savage law.

It must have been pleasing, therefore, to his Lordship, and to the other Judges who assisted him at the trial, that in such a case, and under such circumstances, it was not reserved for *them* to drag from its tomb the remains of this forgotten judgment.

No case has ever occurred, which tends so strongly to inculcate the necessity suggested long since by the wisest of men,* of a revision of our penal code, that a number of barbarous and bloody laws may be blotted from its pages;---laws which are not dead, but sleep---which may be revived from day to day, as occasion shall require, and which are ever ready to fall as a "shower of snares" upon the people.

I cannot conclude, without touching upon one topic connected with these proceedings, and upon which my feelings must be cold indeed, if they allowed me to be wholly silent.---I allude to the conduct of my Advocate and Friend, Mr. ERSKINE. Of his defence, let those who heard it judge. It is sufficient to say, and more cannot be said, that it equalled any of those former exertions by which he has for ever shut out all higher praise. With respect to what is personal to myself, the marks of affectionate interest which he has shown towards me through the whole of this affair, deep as they have impressed themselves upon my mind, have caused, there, no new sensations: They are such as I have often before had reason to experience.---*Stadium suum, curaque de salute mea nulla me nova voluptate affecit.* I have long enjoyed a proportion, perhaps beyond my merits, of his countenance and friendship. It has ever been my study to seek the approbation of a man, whom, for the mild
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* Lord Bacon.

and amiable virtues of his private character, I esteem and love,---whom, for the noble and manly features which mark his public conduct, I admire and venerate--- of a man, whom the force of genius and eloquence has raised in his Profession to that height, where he excites no envy (for he can have no enemy when he has no rival); and whose whole life---a life not untried on the slippery stage of Politics, nor unexposed to all the temptations and allurements of a corrupt ambition---has been a life of honour, integrity, and independence. His has not been "a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out to meet her adversary, but slinks out of the race where the immortal garland is to be run for, not without dust and heat."--- During a period of twenty years, he has fought every arduous contest, in which the rights of his countrymen, and the cause of general liberty, have been involved.--- So many and so splendid have been the triumphs of his eloquence, that they have left to him no farther honours to attain :

Nil jam, Theodore, relictum,
 Quo virtus animo crescat, vel splendor honore.
 Culmen utrumque tenes.

FINIS.

Printed by COOPER and WILSON,
 Wild-Court, Wild-Street, Lincoln's Inn Fields, London.



THE persons whose names are inserted in this Plan, are those whose situations are material in reference to the evidence given against and for Mr. FERGUSSON. The places are those which they occupied at the beginning of the disturbance.

The situations of the Witnesses for the Crown are more particularly important in this view :

At the same table with Mr. Fergusson, we find,

1st, On his left hand, and very near him, Mr. Clifford and Mr. Stafford.

2d, Opposite to him, the Solicitor-General and Mr. Abbott.—And we find,

3d, Directly in front of him, considerably elevated above the rest of the Court, Mr. Justice Heath, and Mr. Serjeant Shepherd.

4th, Upon the same elevation, but considerably to the left of the Learned Judges, we find Lord Romney ; and,

5th, In a situation commanding a different view from all the rest, Col. Parker.

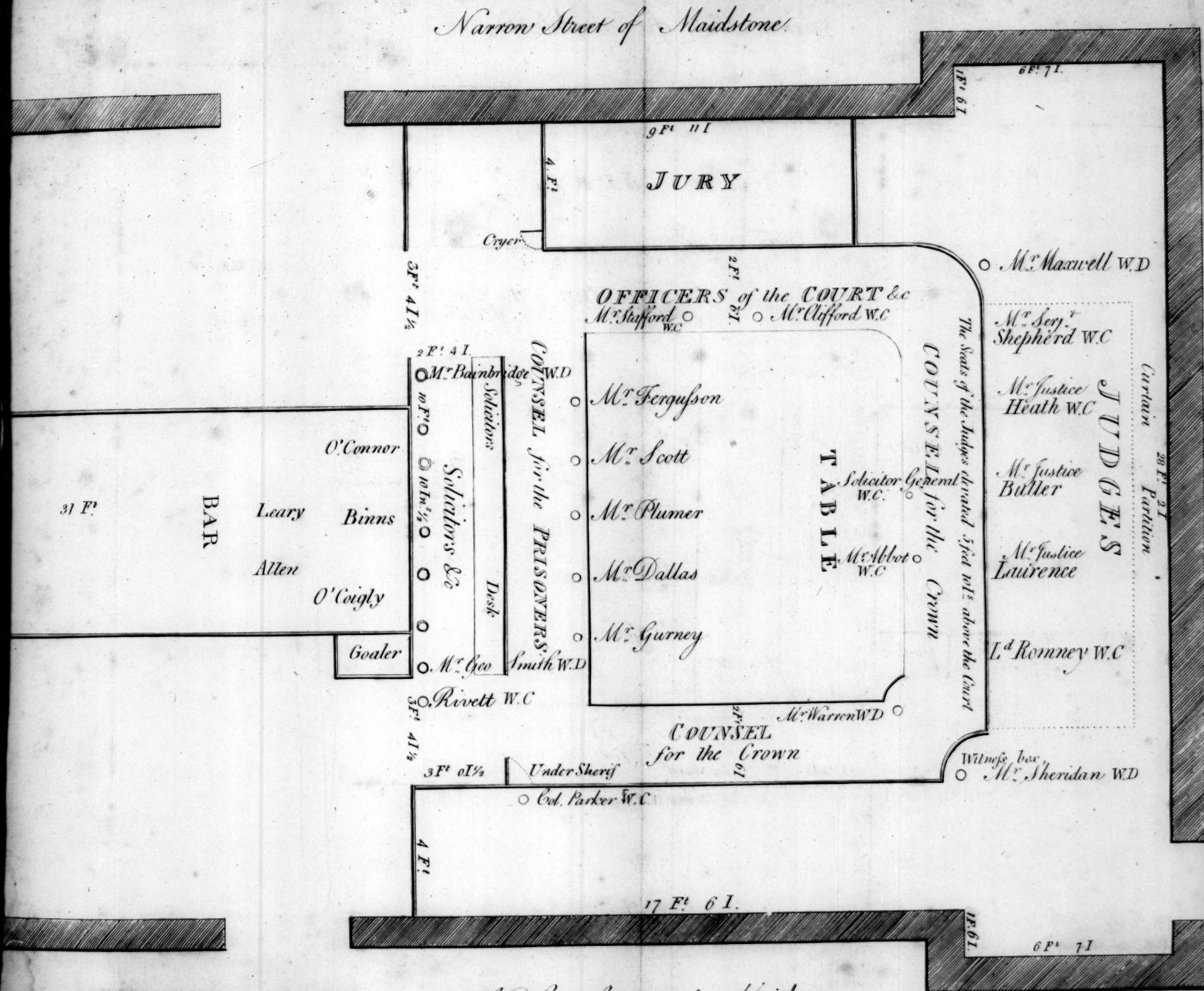
NONE OF THESE WITNESSES SAW ANY PART OF THE SCENE TO WHICH RIVETT SWEARS, AND WHICH FORMED THE MATERIAL EVIDENCE AGAINST MR. FERGUSSON !

* * The letters *W. C.* distinguish the Witnesses for the Crown—*W. D.* the Witnesses for the Defendants.

Messrs. Dallas, Plomer, Gurney, and Scott, were Counsel for the Prisoners, and in their places, as well as Mr. Fergusson.

§ The situation of Mr. Maxwell is mistaken—It was to the left of the Judges, a little beyond Mr. Sheridan.

PLAN of the COURT of MAIDSTONE.



High Street of Maidstone
Scale of Quarter of an Inch to a Foot